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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 106.

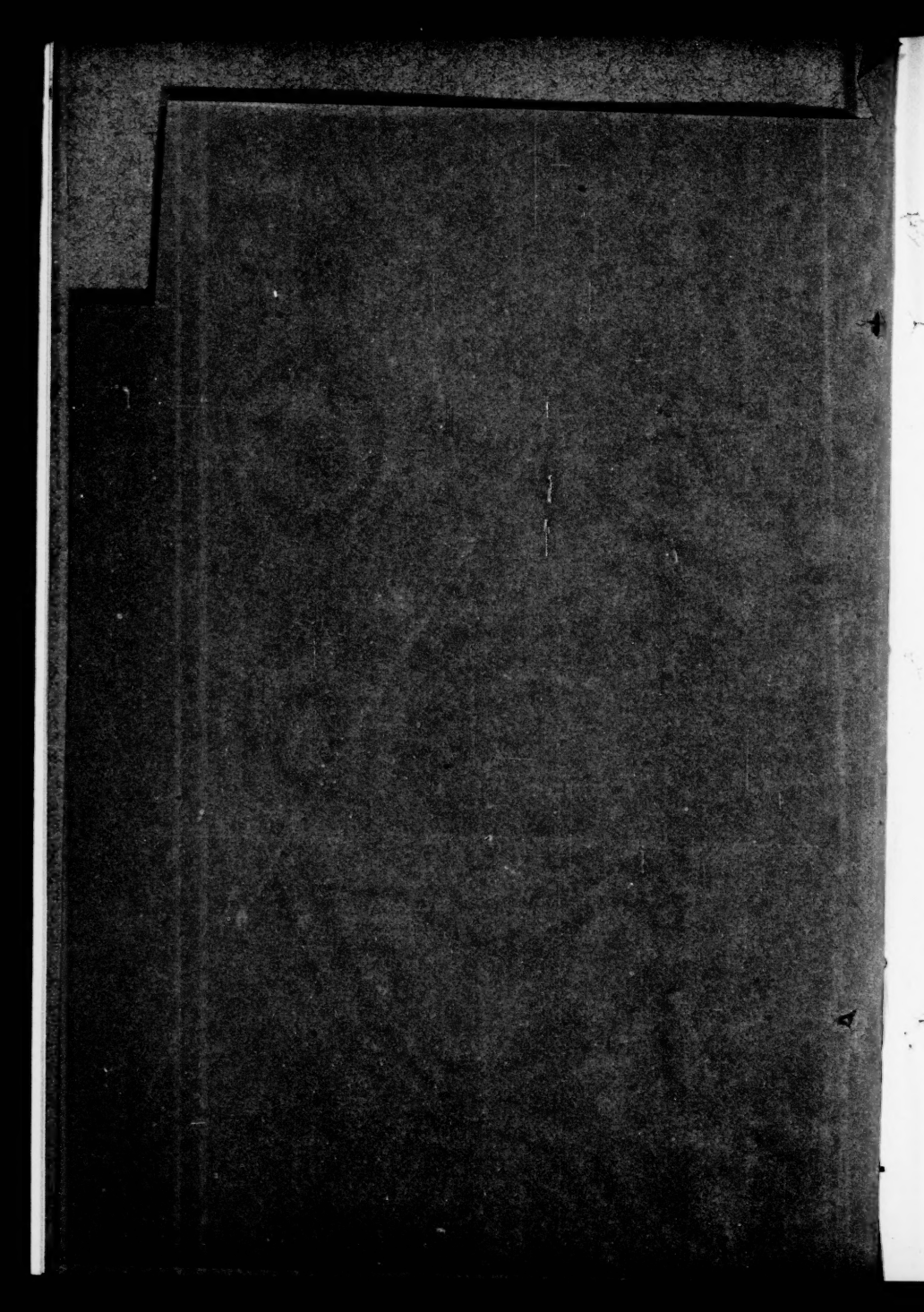
MATTHIAS TERHUNE, APPELLANT,

vs.

JOHN PHILLIPS AND WELLINGTON PHILLIPS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED APRIL 7, 1876.



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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Hon. Henry W. Blodgett, district judge in chancery, sitting pro tempore in the absence of the Hon. Thomas Drummond, circuit judge, on Friday, the twenty-ninth day of January, A. D 1875, in the December term of said court, in the year of our Lord one thousand eight hundred and seventy-four, and of our Independence the ninety-eighth year.

WILLIAM H. BRADLEY, *Clerk.*

MATTHIAS TERHUNE
vs.
JOHN PHILLIPS AND WELLINGTON PHILLIPS.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the twenty-seventh day of July, in the year of our Lord eighteen hundred and seventy-four, came Matthias Terhune, complainant, by his solicitors, and filed in the office of the clerk of the circuit court of the United States for said district, at Chicago, in
2 the district aforesaid, his bond for costs and bill of complaint against John Phillips and Wellington Phillips, defendants in said entitled cause; which said bond for costs and bill of complaint read respectively in the words and figures following, to wit:

Bond for costs.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court. September term, A. D. 1874. In equity.

MATTHIAS TERHUNE
vs.
JOHN PHILLIPS AND WELLINGTON PHILLIPS.

We enter ourselves security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court; and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, hereby agree and stipulate that execution may issue against our property for any costs taxed against him. Dated this 27th day of July, A. D. 1874.

MERRIAM & ALEXANDER.

(Endorsed:) Filed July 27, A. D. 1874. W'm H. Bradley, clerk.

Bill of complaint.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the circuit court of the United States for the northern district of Illinois. In equity.

3 MATTHIAS TERHUNE
vs.
JOHN PHILLIPS AND WELLINGTON PHILLIPS.

To the honorable the judges of the circuit court of the United States for the northern district of Illinois:

Matthias Terhune, a citizen of the State of Illinois and of the United

States, brings this his bill of complaint against John Phillips, a citizen of the State of Michigan and of the United States, and Wellington Phillips, a citizen of the State of Illinois and of the United States, doing business as manufacturers of show cases at Chicago, in said district, and at Detroit, in the State of Michigan, under the name, style, and firm of John Phillips & Bro. And thereupon your orator complains and says that on and prior to the 8th day of August, A. D. 1871, John W. Truby, then a citizen of the United States and of the State of Illinois, was the original and first inventor and discoverer of a new and useful improvement in corner-sockets for show cases, which was not known or used by others before his said discovery or invention thereof, and not at the time of his application for letters patent for said discovery or invention, as hereinafter set forth, in public use, or on sale with his consent or allowance as the inventor or discoverer thereof, contrary to the provisions of the statute in such case made and provided; that the said John W. Truby, being desirous to obtain an exclusive property
4 in said discovery or invention, duly made application in writing to the Commissioner of Patents of the United States, praying that letters patent of the United States might be granted therefor, and delivered to said Commissioner of Patents a written description of the said invention or discovery, and of the manner and process of making, constructing, and using the same, and did make oath, before a person authorized by law to administer oaths, that he did verily believe that he was the original and first inventor and discoverer of the said invention and improvement; that he did not know or believe that the same was ever before known or used; and that he was a citizen of the United States, and did pay into the Treasury of the United States the sum of thirty-five dollars, and complied with all the requisites of the statutes of the United States in such cases made and provided.

And your orator further shows unto your honors that thereupon the said Commissioner of Patents, upon due proceedings had therefor, did grant and issue to your orator, Matthias Terhune, assignee to John W. Truby, letters patent of the United States, numbered 117831, for the said invention and improvement; that said letters patent were issued from the said Patent Office of the United States and were signed by the Secretary of the Interior, and were countersigned by the Commissioner of said Patent Office, and were sealed with the seal of
5 said office, and were recorded, together with the aforesaid descriptions, specifications, and drawings in the said Patent Office, in books kept for that purpose, and contained a short description of the invention or discovery, correctly indicating its nature and design, and in their terms granted to said Matthias Terhune, his heirs or assigns, for the term of seventeen years, from the 8th day of August, one thousand eight hundred and seventy-one, the exclusive right to make, use, and vend the said invention throughout the United States and the Territories thereof.

And your orator further states that, on or about the day of A. D. 18 , and before the issue of said letters patent, the said John W. Truby, the inventor, as aforesaid, of said invention and discovery, by an instrument in writing under his hand and seal, duly executed and delivered, sold, assigned, transferred, and set over unto your orator all his right, title, and interest in and to his said invention and improvement, and the letters patent therefor when granted and authorized, and requested the said Commissioner of Patents to issue the said letters patent to your orator, the said Matthias Terhune, which said assignment was duly recorded in the said Patent Office of the United States, by vir-

tué whereof and of the premises, your orator became and is the sole and exclusive owner of the aforesaid invention and improvement, and
6 of the letters patent granted therefor as aforesaid, and of all the rights and privileges granted and secured, or intended to be granted and secured, by the said assignment.

Your orator further states that, being the sole and exclusive owner of said invention and improvement and letters patent, as aforesaid, he did, on or about the 1st day of December, A. D. 1873, surrender said letters patent to be cancelled, and applied for a reissue of the same on amended specifications and drawings then filed. That said amended specifications and drawings were duly signed and sworn to by said John W. Truby, and filed in the Patent Office of the United States, and such proceedings were thereupon had that reissue letters patent numbered 5748 were ordered to issue and were issued to your orator, under the seal of the Patent Office signed by Co. Delano, Secretary of the Interior, and countersigned by M. D. Leggett, Commissioner of Patents, and bearing date the 27th day of January, A. D. 1874, which said reissued letters patent did grant and continue unto your orator the said Matthias Terhune, his heirs and assigns, for the term of seventeen years from the 8th day of August, A. D. 1871, the exclusive right to make, use, and vend the said invention throughout the United States and the territories thereof, the said improvement in corner sockets for show-cases, therein
7 specified and claimed, as in and by said reissued letters patent, or a certified copy thereof here in court to be produced, will more fully appear.

And your orator further shows unto your honors that by virtue of the premises and of the aforesaid assignment to himself by said John W. Truby, he became and is the sole and exclusive owner of said invention and improvement and of the letters patent granted therefor as aforesaid and all the rights and privileges therein granted.

And your orator further shows that immediately after he became, as aforesaid, vested with the aforesaid sole and exclusive right, he put into use and practical operation the aforesaid invention and improvement, and manufactured in the city of Chicago, in the State of Illinois, large numbers of said corner sockets for show-cases on the plans and specifications and according to said invention and discovery and said letters patent, and manufactured large numbers of show-cases, to which he applied said invention and improvement, and bestowed great labor and trouble in and about said invention and improvement and the carrying on of the business of manufacturing said improved show-cases and selling the same, and invested and expended considerable sums of money in dies and machinery for making the same, and in advertising the same
8 and making it profitable to your orator and useful to the public, and made large and frequent sales thereof to many different purchasers, and has established a large and profitable trade in said improved show-cases. That your orator's aforesaid exclusive right has been generally and fully acquiesced in and acknowledged by the public, and that he has been since the acquiring of the right as aforesaid, and now is, except for the doings of the defendants and their confederates, as hereinafter set forth, in the exclusive possession and enjoyment of the right aforesaid; and that the exclusive right is of great value to your orator, to wit, of the value of thirty thousand dollars, and that your orator will realize large gains and profits therefrom, if infringement thereof by the said defendants and their confederates shall be prevented; and that your orator has been able, and is ready and willing and fully expects to be able, to supply the market therefor from his own manufacture.

And your orator further shows that the defendants above named after the granting of the aforesaid reissued letters patent, and before the commencement of this suit, well knowing the premises and the rights secured to your orator as aforesaid, and in violation of said rights and in infringement of the said letters patent, and contriving to injure your orator, and to deprive your orator of the profits, benefits, and advantages which might and otherwise would have accrued to your orator, and with-
9 out the license or allowance and against the will of your orator, did, at the city of Chicago, and State of Illinois, in said district, and elsewhere in the United States, unlawfully and wrongfully make, use, and vend to others to be used, the said invention and improvement, and did cause the same to be done, and did make, use, and vend to others to be used, a number of said show-cases, made according to, and employing and containing said invention and improvement, or one or more thereof, and still continue so to do, and are threatening and preparing, and are about still further to infringe said patent, and are depriving your orator of sales of said invention and improvement and of show-cases made in accordance therewith, and are injuring the market and breaking down the reasonable prices established by your orator, to his great damage and injury.

And your orator further shows unto your honors, that the aforesaid using and infringing of said improvement, and invention, and letters patent, by the said defendants and their confederates, and the preparation and avowed determination to continue the same, and the other aforesaid unlawful and wrongful acts of the said defendants, have the effect to induce and encourage other persons to infringe and defy the letters patent as aforesaid and the aforesaid exclusive right and privileges of your orator.

Your orator further shows unto your honors, that the said de-
10 fendants have derived and are deriving from the aforesaid making, using, and vending to others to be used of the said invention and improvement, large gains and profits, but how many of said show-cases or of said improved corner sockets for show-cases have been so made and used and sold by said defendants, or what amount of such gains and profits have been derived and received by said defendants, your orator does not know and cannot set forth, but prays that said defendants may be required to make a disclosure of all such making, using, and vending and of all such gains and profits.

And your orator further prays that said defendants may be compelled to make discovery of the method or process by which is made or caused to be made the aforesaid corner sockets for show-cases so as aforesaid made, used, and vended by the said defendants.

And your orator further shows unto your honors, that the said defendants have been warned and requested and notified to desist and refrain from said infringements and said unlawful and wrongful acts; but that said warning and request and notice have been wholly disregarded by said defendants; and that said defendants have entered into combinations and confederacy with other parties with the avowed purpose and intent to raise a joint fund to be employed in opposing and
11 defeating the exclusive right conferred upon your orator by said letters patent, and still continues the infringements and unlawful and wrongful acts aforesaid at the city of Chicago in said district and elsewhere in the United States.

And your orator further shows unto your honors that he is ignorant and cannot set forth how or in what manner the said defendants are engaged in the said infringements and unlawful and wrongful acts hereinbe-

fore complained of, except that your orator upon information and belief avers that they are so engaged therein at the places aforesaid as manufacturers; and your orator prays that the said defendants may make discovery thereof, and may fully and particularly set forth how they are engaged therein.

And your orator prays that the said defendants may be compelled by a decree of this court to account for and pay over to your orator all such gains and profits as have accrued or arisen to or been received or earned by said defendants, by reason of the aforesaid making, using, and vending of the said invention, and all such gains and profits as your orator would have received but for the said infringements and the said unlawful acts and doings of the said defendants.

And that the said defendants, their servants, agents, and work-
12 men, and each and every one of them be perpetually enjoined and restrained by a writ of injunction issuing out of and under the seal of this honorable court from directly or indirectly making, constructing, using, vending, working, or in any manner putting into practical operation or use, or in any way counterfeiting or imitating said invention or improvement or any part thereof, or any machine, device, method, or process in accordance therewith, and that the defendants may be decreed to pay the costs of this suit, and be required to deliver up to your orator all such infringing corner sockets for show-cases now in their possession or under their control, and that your orator may have such further and other relief in the premises as the nature of his case may require and to your honors may seem meet.

To the end therefore that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may full, true, and perfect answers make to all and singular the premises and to the several matters hereinbefore set forth and averred, according to the best and utmost of their knowledge and belief, and of the information, knowledge, and belief of each of them as fully and particularly as if the same were here repeated and they specially and severally interrogated thereunto, but not upon oath, answer under oath being herein and hereby expressly waived:

13 May it please your honors to grant unto your orator not only a writ of injunction conformable to the prayer of this bill, but also a writ or writs of subpœna to be directed to the said John Phillips and Wellington Phillips, commanding them, and each of them at a certain time and under a certain penalty therein to be limited, personally to be and appear before this honorable court, and to do and receive what to your honors shall seem meet in the premises.

MATTHIAS TERHUNE.

STATE OF ILLINOIS,
Cook County, ss:

Matthias Terhune being duly sworn deposes and says that he is the complainant in the foregoing bill of complaint by him signed, that he has heard the same read, and that the same is true of his own knowledge except that part of the same which is stated upon information and belief, and that as to such part thereof he believes the same to be true.

MATTHIAS TERHUNE.

Subscribed and sworn to before me this 11th day of July, A. D. 1874.
[SEAL.] J. W. MERRIAM,
Notary Public.

(Endorsed:) Filed July 27, '74. W'm H. Bradley, cl'k.

14 And on the same day, to wit, the 27th day of July, A. D. 1874, a writ of subpœna issued out of said clerk's office against said defendants in said entitled cause, which said subpœna, together with the memorandum, notice, and return of the marshal thereon, reads in the words and figures following, to wit:

Writ of subpœna.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to John Phillips and Wellington Phillips, greeting:

We command you and every of you, that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of September next, to answer the bill of complaint of M. Terhune this day filed in the clerk's office of said court in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 27th day of July, in the year of our Lord one thousand eight hundred
15 and seventy-four, and of our Independence the 99th year.

[SEAL.] W'M H. BRADLEY, *Clerk.*

Memorandum.—The above-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against them as confessed, and a decree entered accordingly.

W'M H. BRADLEY, *Clerk.*

Circuit court of the United States of America, northern district of Illinois, *ss:*

M. TERHUNE
vs.
JOHN PHILLIPS AND WELLINGTON PHILLIPS. } In chancery, Oct. term, A. D. 1874.

To the above-named defendants:

Take notice that the complainant will move this honorable court on the 11th day of August, A. D. 1874, or as soon thereafter as counsel can be heard, that a writ of injunction issue against the within and above named defendants in accordance with the prayer of the bill herein.

Yours, &c.,

MERRIAM & ALEXANDER,
Compl't's Solicitors.

16 Dated this 27th day of July, A. D. 1874.

I have served the within writ together with the motion for injunction endorsed thereon in the following manner, to wit: Upon Wellington Phillips, therein named, on the 28th day of July, A. D. 1874, by personally delivering to him a true copy of the same on the aforesaid day. I

did not serve the other defendant, having been unable to find him or that he had any residence within my district.

B. H. CAMPBELL,
U. S. Marshal,
By A. C. CAMPBELL,
Deputy.

(Endorsed:) Filed Aug. 1, A. D. 1874. W'm H. Bradley, clerk.

And afterwards, to wit, on the 30th day of September, A. D. 1874, said defendants, by their solicitors, filed in said clerk's office their answer in said entitled cause, which said answer is in the words and figures following, to wit:

Answer.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the circuit court of the United States for the northern district of Illinois. In chancery.

MATTHIAS TERHUNE
vs.
JOHN PHILLIPS AND WELLINGTON PHILLIPS. } For infringement, &c.

17 The joint and several answer' of John Phillips and Wellington Phillips, the defendants, to the bill of complaint of Matthias Terhune, the complainant in the above-entitled cause.

These defendants, now and at all times hereafter saving and reserving to themselves and each of them all benefit and advantage of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties, and other imperfections in the said bill contained, for answer thereto, or to so much or such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, they answer and say that they neither admit nor deny that the said complainant, Matthias Terhune, or the said John W. Truby obtained a valid patent for a new and useful improvement in corner sockets for show cases as set forth and alleged in the bill of complaint filed in this cause, but these defendants leave the said complainant to establish such allegation by proof if he, the said complainant, deems it advisable or necessary so to do. And these defendants know not of their own knowledge, nor have they been informed, save by the said complainant's bill of complaint, whether or not the said complainant complied with all the requirements of law in and about the obtaining of his said patent, if he ever did obtain such patent, but that the same may be true for anything these defendants know to the contrary.

18 And these defendants, further answering, admit that they are now, and for some time past have been, engaged in the manufacture and sale of show cases, in the city of Chicago, in said northern district of Illinois, and have made and sold what is known to the trade as a "metal-corner" show case, similar to that in which the said complainant pretends to have an exclusive ownership by virtue of the pretended patent mentioned and described in said bill of complaint, and that the same were made and sold as aforesaid with the knowledge and belief that the said pretended improvement was not, nor ever has been the

subject matter of a valid patent. And these defendants, further answering, deny that either the said complainant, Matthias Terhune, or any other person or persons, could or can have the exclusive right to manufacture and sell the said "metal-corner" show-case, because the said pretended improvement is old and well known to the public and was known and used for a long time prior to the pretended date of said pretended letters patent. That said "corner-socket" has been used by the public for divers purposes for a long time, and is now in open and common use in many branches of industry.

And these defendants aver that the said complainant well knew the facts above set forth with reference to the public knowledge
19 and use of said pretended improvement previous to the filing of the said bill of complaint in this cause, but caused this suit to be brought for the purpose of coercing these defendants into a compromise, and for the purpose of extorting money from them.

And these defendants, further answering, admit that they have manufactured and sold a limited number of show-cases to which were attached the said pretended improvement and invention, and that such number does not exceed in all over of such cases, and that the same is a very small proportion of the number of show-cases sold within the same time by these defendants of a different design and style of architecture. That the said "metal-corner" show-case is not superior to other designs either in economy of manufacture or in durability, but that if the "metal-corner" show-case has any claim whatever, either to novelty or elegance of finish, the same is based upon looks alone, and is, therefore, a matter of taste and fancy, but is not, nor can be, the subject of a valid patent.

And these defendants, further answering, say that they are informed and believe, and upon such information and belief charge the fact to be, that the said pretended invention is claimed to be owned by other show-case manufacturers than the said complainant, Matthias Terhune.
20 That some time in the month of February, 1874, these defendants received a notice from one William H. Grove, of the city of Philadelphia, Pennsylvania, to the effect that he, the said Grove, was and is the owner of a patent for what is termed a "round corner" show-case, that he controlled the use of the same, and would prosecute for the infringement of the same. That the show-case made by the said Grove under his said pretended patent of November 7th, A. D. 1871, unites the chief features of the device claimed by the said complainant, Matthias Terhune, namely, a "metal socket" or corner, used for the purpose of connecting the ends of the mouldings together.

And these defendants, further answering, deny that the said pretended invention and discovery is new or novel, but on the contrary these defendants aver that the said pretended improvement contemplates nothing more than the application of something old and well known to a different but a familiar use.

[That the Crane Brothers Manufacturing Company, a corporation doing business in the city of Chicago, in said northern district, have for a period of more than ten years last past manufactured, used, and sold what is known to the trade as a tie-joint or metal coupling, which said tie-joint or metal coupling is used for the purpose of connecting steam and gas pipes and other iron bars or rods; that the same result
21 is obtained by the application of said tie-joint or iron coupling as is obtained by the device claimed to be patented by the complainant, for the alleged infringement of which this action is brought.]

(The above enclosed in brackets is the amendment made by leave of court on the hearing herein.—W'M H. BRADLEY, *Clerk*.)

And these defendants deny all and all manner of unlawful combination and confederacy, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for these defendants or either of them to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true to the knowledge or belief of these defendants. All which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct; and pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

JOHN PHILLIPS.
WELLINGTON PHILLIPS.

CRANE & TATHAM,
Solicitors for Def'ts.

(Endorsed:) Filed Sept. 30, 1874. W'm H. Bradley, cl'k.

And afterwards, to wit, on the 21st day of October, A. D. 1874, said complainants, by their solicitors, filed in said clerk's office their replication in said-entitled cause; which said replication is in the words and figures following, to wit:

Replication.

22 Circuit court of the United States, northern district of Illinois.
In equity.

MATTHIAS TERHUNE
vs.
JOHN PHILLIPS AND WELLINGTON PHILLIPS.

The replication of Matthias Terhune, complainant, to the answer of John Phillips and Wellington Phillips, defendants.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says that he will aver, maintain, and prove his bill of complaint to be true, sufficient, and certain in the law to be answered unto, and that the said answer of the said defendant is untrue, uncertain, and insufficient to be replied unto by this repliant, without that any other matter or things whatsoever in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver, maintain, and prove as this honorable court shall direct; and humbly prays as in and by his said bill of complaint has already prayed.

MERRIAM & ALEXANDER,
23 *Compl't's Sol'rs.*

(Endorsed:) Filed Oct. 21, 1874. W'm H. Bradley, cl'k.

And afterwards, to wit, on the 12th day of January, A. D. 1875, in the December term, A. D. 1874, of said court, in the record of the proceedings thereof in said-entitled cause is the following entry, to wit:

MATTHIAS TERHUNE
vs.
JOHN PHILLIPS ET AL. } In chancery.

Now come the parties, by their solicitors, and on motion this cause is set down for hearing upon the pleadings and proofs herein.

And afterwards, to wit, on the 25th day of January, A. D. 1875, in the December term, A. D. 1874, of said court, in the record of the proceedings thereof in said-entitled cause is the following entry, to wit:

MATTHIAS TERHUNE
vs.
JOHN PHILLIPS ET AL. } In chancery.

Now come the parties, by their solicitors, and this cause now coming on to be heard upon the pleadings and proofs herein, and thereupon, by leave of court, defendants amend their answer herein, and complainant elects to proceed with the hearing; and the court, after hearing the same, not being now sufficiently advised in the premises, takes time to consider.

24 And afterwards, to wit, on the 29th day of January, A. D. 1875, in the December term, A. D. 1874, of said court, in the record of the proceedings thereof in said-entitled cause appears the following entry, to wit:

MATTHIAS TERHUNE
vs.
JOHN PHILLIPS AND WELLINGTON PHILLIPS. } In chancery.

The court having considered and being now sufficiently advised in the premises, finds the equities with the defendants, and dismisses the bill of complaint herein for want of equity, at the costs of complainant.

It is thereupon considered, adjudged, and decreed by the court that this cause be dismissed, and that the defendants do have and recover of and from the complainant their costs and charges by them about their defence in this behalf expended, amounting to the sum of ninety two dollars and seventy cents, and that execution issue therefor.

And thereupon said complainant, by his solicitors, comes and prays an appeal to the Supreme Court of the United States, which is allowed upon complainant giving bond in the penal sum of five hundred dollars, with security to be approved by the court herein.

25 And on the same day, to wit, the 29th day of January, A. D. 1875, the following certificate of evidence was filed in said clerk's office in said-entitled cause, in the words and figures following, to wit:

Certificate of evidence.

United States circuit court, northern district of Illinois. In chancery.

MATTHIAS TERHUNE
vs.
JOHN PHILLIPS & WELLINGTON PHILLIPS. }

I certify that the following is a correct statement of the evidence and

exhibits submitted to the court at the hearing of the above-entitled cause before me, on the 25th day of January, 1875, viz:

On behalf of the complainant the depositions of Payson, E. Mayhew, Norman H. Sherburne, John Giles, Matthias Terhune, George W. Eckerson, and John W. Truby, and the following exhibits, viz:

Exhibit A, Mayhew, H. C. Whiting, notary public.
" B, " " " " "
Compl't's Exhibit C (reissued letters patent).
" " D (model show case).

On behalf of the defendants, the depositions of Wellington Phillips, Joseph Monk, Samuel B. Martin and J. D. Kendall; the affidavit of Thomas M. Howe, and the following exhibits, viz.

Def't's Exhibit C (metal plate cover).
" " D (metal coupling), and certified copy letters patent, No. 117831.

26 H. W. BLODGETT,
Judge.

We believe the above statements of evidence & exhibits to be correct.
J. W. MERRIAM.
EDWARD CRANE.

(Endorsed:) Filed Jan'y 29th, 1875. W'm H. Bradley, clerk.

COMPLAINANT'S PROOFS.

Testimony of Payson E. Mayhew.

Testimony of Payson E. Mayhew, taken on the 23rd day of October, A. D. 1874, at Chicago, before H. C. Whitney, special examiner.

Q. 1. What is your name, age, residence, & occupation?

A. Payson E. Mayhew; 38; Chicago, Ills.; brass manufacturer.

Q. 2. Do you know the parties of this suit or either of them? and if you do, state how long you have known them, or either of them.

A. Have known M'r Terhune five years, & Phillips Bros. about 12 months.

Q. 3. Have you had any experience in the manufacture of metallic sockets for show-cases, and if you have, state what it is.

A. Have manufactured the metallic sockets both for Terhune and Phillips Bros.

Q. 4. Have you any samples of what you have manufactured for these parties, and if you have, will you produce them?

A. I have; those for Terhune, (showing them), and these for Phillips Bros. (showing them).

27 (Counsel for complainant here offers in evidence these samples produced by the witness of the corner sockets made for M'r Terhune, and the same are marked "Complainant's Exhibit A, Mayhew, H. C. Whitney, notary public."

Also samples of the corner sockets for show cases produced by the witness as having been made for Phillips Bros., the defendants, and the same are marked "Complainant's Exhibit B, Mayhew, H. C. Whitney, notary public."

Counsel for defendants admit the exhibits above referred to are substantially alike.

Counsel for complainant here offers in evidence letters patent, re-

issue No. 5748, issued to Matthias Terhune, Jan. 27th, 1874; said patent being a reissue of letters-patent, issued to said Matthias Terhune, as assignee of John W. Truby, Aug. 8th, 1871, and No. 117,831, and the same is marked "Complainant's Exhibit C, H. C. Whitney, notary public.")

Q. 5. Please look at the reissue patent, complainant's Exhibit C, and state whether, from the specification and drawings thereto annexed, you would be able, as a mechanic, to make the corner piece D therein described?

A. I should be able to.

Q. 6. Are the samples of the corner piece D which you have produced with the samples marked "Exhibit A," and with the samples marked "Exhibit B" like or unlike the corner piece D shown and described in the reissue letters-patent, Exhibit C, and if they are unlike it,
28 state in what respect?

A. They are like them.

Q. 7. How many sets of corner sockets for show-cases like complainant's Exhibit B have you made for the defendant, if any, since January 27th, 1874?

A. I am not quite certain whether nine or ten. This Exhibit B is a half set.

Q. 8. What is your opinion as a mechanic with reference to the importance in the manufacture of show-cases of these corner-socket pieces, and state in your answer any reasons you may have for such opinions as you may express.

A. They tend to strengthen the show-case—the woodwork of the show-case—they also protect the prominent parts of the case, particularly in handling and shipping, and make the case highly ornamental in its appearance.

Cross-examination by Edward Crane, counsel for the defendants:

X Q. 1. How long have you been engaged in the business of brass-founder?

A. About 5 years.

X Q. 2. When did you first commence to manufacture socket corners for show-cases?

A. It was about July, 1871.

X Q. 3. Were those made by you in 1871 similar to those introduced by you in this case?

A. They were.

X Q. 4. Can you tell how many sets of metal corners you have made for the complainant since Jan. 1st, 1874?

A. I cannot state the exact No.

29 Q. Approximate the No.

A. I should judge I had made over a hundred sets.

Q. 6. Do you know whether or not any metal sockets similar to these shown have been made by any other person?

A. They have.

Q. 7. By whom?

A. By the Union Brass Manufacturing Company of this city.

Q. 8. For whom were they made, if you know?

A. For M'r Terhune.

Q. 9 I will ask you now, as a mechanic, if in the course of your experience you have ever seen a device similar to the metal socket used for any other purpose than the manufacture of show-cases?

A. I have not.

Q. 10. You may state in what respect the application of this metal socket adds to the strength of a show-case.

A. Being a metal covering to the wood, and fitting every part of the corner, it naturally supports and strengthens the woodwork as well as the glass.

Q. 11. Did you ever apply one of these sockets to a show-case yourself?

A. Never.

Q. 12. Did you ever see one applied by any other person?

A. I have seen many of them applied by the workmen in M'r Terhune's show-case factory.

30 Q. 13. In preparing the moulding of the show-case for the corner socket, is not the strength of the moulding impaired at the point of insertion?

A. Not materially.

Q. 14. Is it in any respect?

A. I should think not.

Q. 15. Is the moulding of an equal thickness and strength, both outside and inside of the socket?

A. That portion of the moulding coming in contact with the glass is slightly decreased in size inside of the socket.

Q. 16. These projections on the inside of the socket render it necessary to cut the moulding away, do they not?

A. They do.

Q. 17. If a show-case, having attached the metal socket, were handled roughly in shipping, what point of it would be most likely to be broken aside from the glass?

A. As the metal corners could not break the wood must necessarily give way.

Q. 18. Would it not be most likely to break at or near the socket joint?

A. The glass being broken, it would be as likely to break in one place as another.

Q. 19. Is it a fact that show-cases having the metal socket attached are stronger than the ordinary metal case.

A. I am not familiar with the construction of the metal case, or of cases other than those using the socket corner.

Q. 20. Then why did you state that the socket-corner cases were the strongest?

31 A. My statement was in comparison to wood cases without the socket-corner.

Q. 21. Have you ever had any conversation with M'r Terhune about this suit?

A. Yes.

Q. 22. Where did you have it?

A. Since I came in this office, to-day.

Q. 23. How long have you been a mechanic?

A. Since 1856.

Q. 24. Did you ever see a show-case packed up for the purpose of shipment?

A. Yes.

Q. 25. Now you may state, if you know, anything about the cost of manufacturing different styles of show-cases.

A. Farther than the cost of producing a set of corner-sockets, I know nothing.

PAYSON E. MAYHEW.

Testimony of Norman H. Sherburne.

Testimony of Norman H. Sherburne, taken on the 23d day of October, A. D. 1874, at Chicago, before H. C. Whitney, special examiner.

Question 1. What is your name, age, residence, & occupation?

Answer. Norman H. Sherburne; 39 years; residence Chicago, Ill's; occupation, patent solicitor.

Q. 2. Are you acquainted with the parties to this suit, or either of them, and, if you are, how long have you known them or either of them?

A. I am acquainted with Matthias Terhune; have known him about two years. I am not acquainted with the other parties.

Q. 3. What has been your experience in regard to new inven-
32 tions, letters patent, and testifying as an expert in mechanical matters and suits involving the construction & validity of letters patent?

A. I have formerly worked at mechanical work of different kinds; have been more or less engaged, for the last ten years, in soliciting patents; have often made examinations of the records of the Patent Office, & have been frequently examined as an expert in patent cases.

Q. 4. Please look at the letters-patent marked "Complainant's Exhibit C, H. C. Whitney, notary public," and state whether the specifications and drawings are sufficiently explicit to enable a mechanic skilled in the art to make the invention therein described.

A. I have examined the letters-patent marked "Complainant's Exhibit C, H. C. Whitney, notary public," and I do find them sufficiently full and clear to enable a mechanic to make a show-case corner piece as represented in the drawings and set forth in the description.

Q. 5. What is the invention which you find described and shown in said letters-patent?

A. It consists in a metal corner piece provided with sockets adapted to receive the ends of the horizontal and vertical members of the show-case frame.

Q. 6. Please look at the samples marked "Complainant's Exhibit A, Mayhew, H. C. Whitney, notary public," and also at the samples marked "Complainant's Exhibit B, Mayhew, H. C. Whitney,
33 notary public," now shown you, and state whether you find the invention described and shown in said letters-patent represented in said samples, or either of them, and, if so represented, whether said sample representations differ in any respect from the inventions shown in the patent, and, if so, in what respect?

A. I have examined the samples marked "Complainant's Exhibit A, Mayhew, H. C. Whitney, notary public"; also the samples marked "Complainant's Exhibit B, Mayhew, H. C. Whitney, notary public," and I find them to embody the invention set forth in said letters-patent, and to be identically the same in all essential points.

Q. 7. Have you made an examination of the records of the Patent-Office, and other investigations, and also examined the letters-patent, complainant's Exhibit C, with the view of determining upon the question of novelty and importance of the invention described in said letters-patent; and, if you have, please state what your conclusions were in reference to the matter, and give any reasons you may have for arriving at such conclusions.

(Question objected to by counsel for defendant.)

A. I did examine the records of the Patent-Office with reference to the said invention some time in the summer of 1872, I think in July,

preparatory to preparing the specification for the reissue of the original patent—complainant's Exhibit C being the reissue mentioned. In that examination I did not find a corner-piece for show-case frame having sockets to receive the different members of the frame, as described and claimed in the reissue, complainant's Exhibit C. I have fre-
34 quently examined show-case frames, both before and since I made the examination in the Patent-Office, with the view of determining in my own mind the utility of the invention, and I came to the conclusion that the invention was a decided improvement over the usual manner of connecting the corners of the show-case frame—that is to say, first, it is not necessary to mitre the ends of the pieces together at the corners of the frame; besides, the sockets prevent the members of the frame from being displaced, and thus add strength and durability to the frame.

Q. 8. Is it your opinion that there is any other feature than what you have just mentioned in this invention to make it important in the manufacture of show-cases? And if it is, please state what, and give your reasons for any opinion you may express.

(Question objected to by counsel for defendant.)

A. It is my opinion that there is another important feature in the invention, and that is by using the metal corners, which are susceptible of a high degree of finish, they add great beauty to the design of the frame, which, in my opinion, is a decided improvement over that class of show-case frames not having the metal corner-pieces.

(Answer objected to by counsel for defendant.)

Q. 9. Do you regard the elegance and beauty of a show-case to be an important and essential element to the manufacturer and dealer to success in that line of business?

A. I do.

Cross-examination by M'r Crane, counsel for defendant:

35 Cross-q. 1. To what particular branch of mechanical work have you devoted the most of your time during the last ten years?

A. For the most of my time during the last ten years I have been employed in patent soliciting, in which a great many different classes of mechanical inventions came before me; but when I have been engaged in mechanical work I have been building machinery of different kinds and drawing plans and specifications for buildings and bridges of different kinds.

Q. 2. Did you ever devote your time and attention to any particular art or trade? If you did, state where, the trade, and the length of time you devoted to acquiring a knowledge of the same.

A. If I understand the attorney to mean that he wishes to know if I ever served any time as an apprentice in learning any particular trade, I will answer no; but I have worked at mechanical work of different kinds, that is to say, building machinery and at house carpentering, more or less, ever since I was sixteen years of age.

Q. 3. State briefly what kind of machinery you have built.

A. I have built threshing machines, fanning-mills for separating grain; I have built wood-working machinery, &c., &c.

Q. 4. When did you first examine the records of the Patent-Office with reference to the patent granted Matthias Terhune for a metal socket for show-cases?

36 A. It was some time in the summer of 1873; if I remember correctly, in the month of July.

Q. 5. You drew the specifications under which the patent was issued, did you not?

A. I drew the specification for the reissue of the letters-patent. I did not draw the original specification.

Q. 6. Are you familiar with the different styles of show-cases now being manufactured by makers generally?

A. I am somewhat familiar with the show-cases manufactured by different manufacturers in this city.

Q. 7. Have you ever in your experience seen a show-case that bears any analogy to the case manufactured by the complainant in this cause with reference to the application of the metal corner socket?

A. I have not, only those manufactured by Terhune.

Q. 8. Do you know whether or not a metal corner socket has ever been applied to a show-case made by any other person than the complainant in this cause?

A. I have no personal knowledge of such having been applied to show-case frame other than those made by M'r Terhune.

Q. 9. State whether or not during your examination of the patent records, a show-case similar in design & construction to the drawing now shown you as part of defendant's Exhibit B, came to your attention at that time.

(Objected to by counsel for complainant.)

A. I have no distinct recollection of seeing a show-case frame with a plate covering the outer surface of the corner, as appears to be illustrated in the circular of Exhibit B.

37 Q. 10. You have no knowledge, then, of the existence of a show-case similar to the one shown in defendants' Exhibit B?

A. No; I have not as there illustrated.

Q. 11. Take the samples marked "Exhibit A, Mayhew," and state in what respect they are of value or utility as applied to show-cases or the frames of show-cases.

A. They are provided with sockets which receive the ends of the two horizontal members and the vertical member of the show-case frame at their junction, the corner of the frame, by fitting the members of the frame into the socket; the walls of the same serve to hold the pieces together more firmly than if the same were mitred and glued or secured by a dowel or screw.

Q. 12. Do you consider the invention described in letters patent granted to complainant as a new and useful improvement in the art of manufacturing show-cases?

A. I do; that set forth in the reissue patent dated Jan. 27th, 1874.

Q. 13. In your judgment does the application of the metal socket-joint increase the strength and durability of show-cases?

A. It does.

Q. 14. In what respect does it add to the durability and strength of a show-case?

A. It holds the different members together at their junction, thus preventing them from being broken apart, as is liable to be the case when secured by glue only.

38 Q. 15. State whether or not the metal sockets are fastened to the frame of the case by means of a screw or rivet.

A. I believe they are. The bottom pieces of the frame are secured by a screw passing upward thro' the lower wall of the socket into the timber, while members above are secured by a screw passing through the inner wall of the socket into the timber, which prevent the same

from drawing out of the socket when subjected to a strain having a tendency to separate the members at their junction.

Q. 16. Is it not a fact that the thickness of the moulding at the point of insertion must first be reduced before the metal socket can be attached?

A. It may be done so, but it is not actually necessary.

Q. 17. Is it not necessary to reduce the moulding at the point of insertion in order to form a proper joint?

A. No, sir; it is not an absolute necessity. The outside of the socket is intended to project outward, slightly beyond the outer surface of the moulding, in order to admit of the proper finish of the corner piece.

Q. 18. Do you know how these sockets are applied to a show-case?

A. I do.

Q. 19. Are you familiar with the complainant's method of applying the same?

A. I do not know that I ever saw him put them on.

Q. 20. Have you ever seen a show-case made by the complainant having attached the metal socket?

39 A. I have seen show-cases completed and in process of being manufactured in the shop of M'r Terhune.

Q. 21. Were the mouldings of the show-cases that you saw in process of completion in complainant's shop reduced in thickness at the point of insertion?

A. No, sir; the moulding upon the outer face of the member was not reduced, the same being formed with a moulding tool of some kind corresponding with the curvature of the moulding on the outer face of the corner piece.

Q. 22. Would not that process reduce the thickness of the moulding?

A. It would have to reduce the thickness of the timber of which the moulding was formed in order to give the necessary curvature to the moulding; but when the moulding has been once formed, corresponding with the curvature of the moulding on the outer face of the corner-piece, there is no necessity of reducing the size of the moulding to admit of its passing into the socket.

Q. 23. Would the process by which the moulding is adjusted to the outer surface of the corner-piece impair the strength of the timber at the point of adjustment?

A. No more so than it would at any other point in the moulding, if properly worked.

Q. 24. You understand that the letters patent granted to the complainant in this suit is for a new and useful improvement for metal corner-sockets for show-cases, boxes, do you not?

40 A. I am not aware, sir, of any such fact, that there is any mention made of boxes in the reissued letters patent to the plaintiff Jan. 27th, 1874.

Q. 25. Do you know whether or not the original patent granted to Matthias Terhune, as assignee of John W. Truby, was intended to cover or did cover or made reference to metal socket-corners for show-cases, boxes, and the like?

(Objected to by complainant's counsel as introducing new matter.)

A. I do not remember as to the exact wording of the claim, but I believe boxes were mentioned in the body of the specification. I do not remember as there was anything shown in the drawing except a show-case; am inclined to think there was not.

Q. 26. Have you ever seen a metal corner-piece of any kind applied to a box as a means of a protection from injury?

A. I have; have seen them made of flat pieces of iron, bent at a right angle so as to fit against the outer surface of the sides and ends of the box.

Q. 27. Are you familiar with what is known among mechanics as a tee-joint?

A. I have seen gas-pipe connected with a tee-joint or coupling.

Q. 28. Is not the result obtained by the use of a tee-joint, the same as that gained by means of the corner pieces used on the show-cases made by complainant, except as to the mode of application?

A. No, sir; not in gas-pipe coupling.

Q. 29. What is the difference between the result obtained by
41 the use of a tee-joint in securing the ends of iron pipe and the metal joint now shown you as part of complainant's "Exhibit A, Mayhew," in reference to the application to the members of a show-case frame?

A. In connecting iron pipes the coupling is used to insure a steam-tight joint which could not be connected without a thread being formed on the inner side of the coupling & outer side of the pipe by which the pipes are held together; in a show-case frame the sockets are used to connect the ends of the timber or members forming the rectangular or other show-case frame without mitreing the members together at their junction.

Q. 30. Allowing a difference in the mode of application between the gas-pipes inserted into a tee-joint by means of a thread and the method by which the mouldings are attached to the metal socket, would not the iron coupling or joint form a combination identical to that produced by using the metal socket?

A. You could make a combination of three pieces of timber by driving them into the end of a tee-coupling; but it is my opinion that such would make a rude show-case frame.

Q. 31. In your opinion, does the application of the metal socket diminish the cost of manufacturing show-cases?

A. I do not think that it would diminish the cost to any considerable extent.

Q. 32. Is it not a fact that cases made with the metal socket attachment are more expensive than cases of a different design and com-
42 bination of parts?

A. That would depend wholly upon the manner of connecting the different members.

Q. 38. What points of excellence constitute in your judgment the utility, novelty, and value of the complainant's invention?

A. First, it makes a stronger and more durable frame. Secondly, it is more beautiful in design than would be the case if the frame-work was made of the same kind of material and without the corner pieces, for there is a contrast between the wood and metal which is pleasing to the eye.

NORMAN H. SHERBURNE.

Testimony of John Giles.

Testimony of John Giles, taken on the 23d day of October, A. D. 1874, at Chicago, before H. C. Whitney, special commissioner.

Question 1. What is your name, age, residence, and occupation?

A. John Giles; age, 40 years; residence, Chicago, Illinois; occupation, show-case manufacturer.

Q. 2. Do you know the parties of this suit, or either of them? If you do, state how long you have known them, or either of them.

A. Yes. I know them both. I have known Terhune for sixteen years. I have known the Phillips, the one who is here, about one year.

Q. 3. How long have you been engaged in the manufacture of show-cases?

A. Since I was 15 years of age—for twenty-five years.

43 Q. 4. Where have you been so employed?

A. In the city of London, England, city of New York and city of Chicago, in this country.

Q. 5. Please look at the samples marked "Exhibit A, Mayhew, H. C. Whitney, notary public." State if you know what they are for.

A. Yes. They are metal socket corners for show cases.

Q. 6. Are you familiar with the way in which they are used in the manufacture of show-cases, and what they accomplish in the show-case?

A. Yes; I am familiar with their use. I think they add to the strength, also the beauty of the show-case; they do away with the use of glue, or pins, or tenons, and thus secure a safe firm joint.

Q. 7. Please state whether, as a manufacturer, you consider these metallic corner sockets for show cases of value and importance in the manufacture of show-cases, and give your reasons in full for such opinion as you may express.

A. I consider them of importance and benefit to the case both in style and strength. The wood show cases are made with pins or tenons to form a joint at their corners, and there are various reasons why those corners should give way, which renders the case valueless both in appearance and durability; the socket corner is so constructed as to make the strength greater than any pressure that could be brought to bear on the case, as the socket takes nearly the full size of the moulding, and are fastened with screws. The metal show-cases are put together

44 at the corners with solder, and there are various reasons for those joints to give way, namely, impurities of the acids used for stowing the solder, or the impurity of the solder, thus making the joint less reliable than that of a metal socket. The case is also easier to be kept clean, not half the work to keep it clean as the metal show-case.

(Counsel for complainant here offers in evidence a model of show-case made with the Terhune patent metal corner socket, and the same is marked "Complainant's Exhibit D, H. C. Whitney, notary public.")

Q. 8. Please look at this model complainant's Exhibit D, and state whether that is a correct model of a show-case with the Terhune patent metallic corner socket applied.

(Objected to by counsel for defendant.)

A. Yes.

Q. 9. Explain by this model how the corners would be made, or the different pieces fastened together at the corners without the use of the corner-sockets, when the pieces are made of wood.

A. The corners are put together by pins or tenons, a tenon and mortice forming the frame-work of the top corners. The base of the case is mitred and nailed together, a tenon and mortice are not larger than three-eighths of an inch in size, from a quarter to three-eighths of an inch in size, and those mortices and tenons depend entirely upon glue to hold them; they are liable to give out when put together in

45 that way at any time.

Q. 10. Is it possible to join two pieces by a mortice and tenon

without cutting away at least one-half of one or both pieces, in making the mortice or tenon?

(Objected to by counsel for defendants.)

A. No; it is not possible. To cut away more than two-thirds, especially on the front corner post, where the front corner post is let into the top; there you have two mortices and two tenons in one place, which is necessary in making a show-case.

Q. 11. Please explain more fully how the corners are ordinarily made in the manufacture of what are termed metallic show-cases?

A. The metal is drawn over pine moulding in long lengths, the corners are mitred with a saw, the wood is cut away to allow the fitting of the joint and the soldering of the same.

Q. 12. Just tell me what is cut away and what is soldered, and how the pieces go together at their ends to form a corner?

A. The pine rod is cut away at the joints, sufficient to admit the soldering of the joint; there is nothing left but the metal until you get your solder in there. The metal is filed to a joint and soldered; the solder holds the metal together.

Q. 13. Then do you mean that after the metal is formed over the pine rod or moulding, in suitable lengths for the various pieces of the
46 show-case, the ends of the pine rod or moulding are cut off, so that they do not extend out as far as the metal cover?

A. Yes.

Q. 14. How thick is the metal plate that is used to cover the pine rod or moulding with?

A. Usually from gage numbers 28 to 30. I understand that to be 28 to 30 to the inch.

Q. 15. After the ends of the pine rod or moulding are cut off, leaving the metal cover extending out beyond them, how are these pieces put together to form a corner?

A. They (the metal) are filed to a point and soldered.

Q. 16. Where you have used the expression "mitred," or "mitred off" to form a joint or corner, please explain what you mean by mitred.

A. A mitre is a joint at a given angle, either square or otherwise. A square mitre is a straight cut at an angle of forty-five degrees.

Q. 17. Will you explain what you would do to two straight pieces of wood to join them together, forming a mitred joint at a right angle?

A. I would saw them perpendicular at an angle of forty-five degrees.

Q. 18. Well, after you had sawed them off, making a smooth straight cut at an angle of forty-five degrees, what would you do next to form the right angle joint?

A. Put the two mitred ends together and secure them with nails and glue.

Cross-examination by M'r Crane, counsel for defendant:

47 Cross-q. 1. Have you ever been employed by Matthias Terhune, complainant in this suit? If so, please state when and how long you were so employed.

A. I have for about four years; nine years since I commenced working for him and five years since I left him.

C.-q. 2. When did you first learn that Matthias Terhune had obtained a patent for corner sockets for show-cases?

A. I do not remember the time when it was.

C. q. 3. Have you ever made a show-case similar in design to the model marked complainant's "Exhibit D," introduced in evidence in this cause?

A. No.

C. q. 4. Have you ever seen a show-case joined together at the corners by means of a metal plate or joint aside from those manufactured by complainant?

A. Yes.

Q. 5. State where you saw such a case, how the corners were joined together, how the metal piece was applied, and for what purpose, and whether or not the same was in any respect similar to the socket used by complainant?

A. In the Northwestern Show-case Manufacturing Company's ware-room; the corners were joined together the same in all respects as Exhibit D.

Q. 6. Have you ever seen or heard of a show-case manufactured by parties in the United States having a metal corner-piece applied thereto, other than parties residing in the city of Chicago?

48 A. Yes; there is a man in New York City who has a right from M'r Terhune to manufacture under this patent, as I understand it; his name is William H. Core. I have never heard of any other outside of the city of Chicago.

Q. 7. What business are you engaged in at present?

A. Manufacturing show-cases.

Q. 8. Are you acquainted with a show-case maker in the city of Philadelphia named William H. Grove, or with the styles of cases made and sold by him?

A. No.

Q. 9. Have you never, during the course of your business, received a circular letter from said Grove warning you, threatening prosecution, for infringement of a certain patent owned by him, or claimed to be owned by him?

A. Never to my knowledge.

Q. 10. Did you ever see any such letter?

A. I had a letter once warning me or cautioning me against a double-beveled case; that is the only letter I ever received.

Q. 11. Are you not aware that said Grove is now making metal corner show-cases?

A. No; I am not.

Q. 12. What, in your judgment, M'r Giles, constitutes the value and utility of the metal socket corner compared with other cases of a different design and combination of parts?

A. First, the beauty of the case, and I think it certainly stronger then any other case, and much easier kept clean.

Q. 13. In your judgment, does it cost less to manufacture the

49 metal socket case than the ordinary metallic cases in use?

A. I think it costs more.

Q. 14. You will please to state the reason for giving the opinion that the metal-socket case is much stronger than other styles in common use.

A. There are various reasons why the wood case without the metal-socket corner should come apart, as they depend entirely upon glue, which is perishable; the climate and atmosphere affects glue, perishes it.

Q. 15. Are the ordinary styles of show cases joined together at the corners by means of glue alone?

A. All wood cases are.

Q. 16. Are the metal ones so joined together?

A. No.

Q. 17. Wooden cases are cheaper than the other, are they not?

A. Yes, sir.

Q. 18. In respect to the durability of show cases, is it not a fact that an ordinary metallic case properly joined together at the corners would be as strong and endure as long as a case the ends of which are joined together by means of a metal socket?

A. I think not.

Q. 19. For what reason?

A. That a metal case with a soldered joint is liable to break from impurities of lead or solder. In the metal-socket corner the mouldings are joined by screws; there is nothing used to connect the metal-socket corners that is perishable, neither solder or glue.

50 Q. 20. If solder of a bad quality were used, would it not be discovered at the time?

A. Not always.

Q. 21. Are not the joints of ordinary metallic cases sometimes secured by wooden pegs or rivets?

A. No; I never saw one in my life.

Q. 22. Did you ever know of a metallic case coming apart at the corners by reason of the use of inferior solder?

A. Yes; very frequently.

Q. 23. Were those of your own manufacture?

A. Yes; and others too.

Q. 24. Would it not be possible, M'r Giles, to make a metallic case joined so at the corners as to resist an equal pressure, or to contain the same strength as the case made by complainant?

A. I think not without disfiguring the metal case.

Q. 25. Are the mouldings in complainant's case stronger than those ordinarily used in the manufacture of metallic cases?

A. Yes.

Q. 26. Are not the mouldings used by complainant in the construction of the metal corner case weaker at the point of insertion into the socket than any other part?

A. No; they are much stronger.

Q. 27. Are the mouldings reduced in thickness at the point of insertion into the socket?

A. They are reduced, but very little; not enough to injure them or weaken them.

51 Q. 28. What is your reason for saying the moulding inside of the socket has more strength than at any other point?

A. Because it is supported securely by screws.

Q. 29. From your experience as a show-case maker, would you conclude there is a greater profit in the manufacture of the metal-corner case than in others ordinarily used?

A. Yes; I think there is.

Q. 30. For what reason?

A. I understood so from M'r Terhune.

Q. 31. Did you ever in your experience see a device made of any kind of metal similar in design or use or application to the joint used by Terhune?

A. No, sir.

Q. 32. Did you ever see a socket-wrench?

A. Yes; an old-fashioned socket-wrench.

Q. 33. Did you ever see a tee joint or coupling?

A. I don't know what you mean by a tee coupling or joint.

Q. 34. Did you ever see a frame-work of any kind made of wood, and joined together at the corners by means of a metal joint?

A. I have seen the ends of roof-timbers supported by iron shoes, the term used for them by builders.

Q. 35. Were they not used for the same purpose, or to effect the same result, as the socket used by the complainant to connect the ends of the horizontal and vertical members of the show-case frame?

A. I don't know what they were there for; I have seen them used for that purpose.

52 Q. 36. What, in your judgment, were they used for; for connecting the pieces and giving them strength, or what?

A. My opinion—the principal use they were put to was to receive the iron rods.

Q. 37. Did you ever see them used where timbers were joined together at the ends?

A. I have seen them used with timbers, but I don't know why they were used.

Q. 38. Are not these shoes used to perform the same office in respect to sustaining iron rods and timbers as the metal corner piece used by complainant to sustain the horizontal members of the show-case frame?

A. I don't know the use of the iron shoe.

Q. 39. Have you ever had a conversation with M'r Terhune in reference to testifying here to-day?

A. No.

JOHN GILES.

Testimony of Matthias Terhune.

Testimony of Matthias Terhune, taken on the 23d day of October, A. D 1874, at Chicago, before H. C. Whitney, special examiner.

Question 1. What is your name, age, residence, and occupation?

A. Matthias Terhune; 44 years of age; residence, Chicago, Ill.; occupation, show-case manufacturer.

Q 2 Are you one of the parties of this suit?

A. I am.

Q. 3. Do you know the defendants; and if you do, how long have you known them?

A. I have only known one of the defendants since last Saturday; the other I do not know.

53 Q. 4. How long have you been engaged in the manufacture of show-cases?

A. Since 1845.

Q. 5. How long and to what extent, if at all, have you carried on the business yourself?

A. I have carried on the business myself about 15 years; from twenty to thirty thousand dollars a year aggregate of sales.

Q. 6. When did you first manufacture show-cases with corner-sockets like the samples, Complainant's Exhibit A, Mayhew?

A. Some time in 1871 or latter part of 1870; I am not positive.

Q. 7. To what extent have show-cases with that invention been introduced into use since that time?

A. Well, it 's been about eighty per cent. of all the trade I have done.

Q. 8. To what extent have your rights under the letters patent, Exhibit C, been respected by other show case manufacturers?

A. It has been respected as far as I know. I have been informed

that Phillips and others have infringed it. I believe that Phillips sold the first case. It has been respected up to the time this combination was formed.

Q. 9. Of what combination do you testify?

A. Those that I have been informed of—Phillips Bros., Eckerson & Worthing, and the Northwestern Show-Case Manufacturing Co., and Anderson, Dickson & Co.

Q. 10. What is the business of these various firms, and where do they do business?

54 A. They are show-case manufacturers, and do business in Chicago.

Q. 11. How many show-cases with your patent corner-socket have you been informed that each of these firms have made?

(Counsel for def't objected.)

A. I have not been informed how many any of the different firms have made, but I have been informed that there have been some fourteen or sixteen sets of corners made, enough to make fourteen or sixteen cases, made and sold to these parties.

Q. 12. You say that about eighty per cent. of your sales are show-cases having the patent socket attachment; how rapidly did your trade grow into this kind of show-cases, and is it still increasing?

A. The bulk of my trade ran right into the socket-corner as soon as I commenced to make it, and it is now, and is still increasing.

Q. 13. Do you find the invention patented in the reissue patent, Complainant's Exhibit C, to be valuable and important in the manufacture of show-cases? and, if you do, state in what respects, and give such reasons as you have for any opinion you may express.

A. I do. They are a case that is more saleable than any other case that I manufacture, and I make a larger percentage & profit on all cases sold than any other cases manufactured by me. They are more saleable

55 because they are considered prettier than any other case and liked better, and those cases save a great deal of labor and cleaning—they are easier kept clean; they are also a much stronger case.

Q. 14. Are elegance and beauty one of the important features of a show-case to make it desirable for the purposes in which a show-case is used?

A. They are.

Q. 15. State why.

A. It makes the goods look better; they also give the store a much better appearance, and they attract the attention of customers coming into the store much sooner than any other case.

Q. 16. Why are your metallic corner-socket show-cases stronger and more durable than any other show-case?

A. Well, from the fact of having a cast socket metal corner, which I consider much stronger than a wood corner morticed and tenoned together, which is held together by glue; and it is much stronger than a metal case which is put together with soft solder.

Cross-examination by M'r Crane, counsel for defendant:

Cross-q. 1. When did you first become acquainted with John W. Truby, the original inventor of the corner-socket for show-cases?

A. I think it was some time in 1871 or latter part of 1870.

C. Q. 2. At that time did you have a conversation with Truby in respect to his discovery or invention?

A. Yes, sir.

56 C. Q. 3. State briefly what Truby said to you in reference to this invention.

A. He told me that he had something that he wanted to sell me. I asked him what it was, and he told me it was a patent that he had for making metal corner show-cases. I asked him what he would sell it to me for—how much. One hundred and fifty dollars, he said, for his right, which I did not agree to. Then he proposed to sell it to me for a ten-foot metal show-case, delivered in his store safe and sound, which I agreed to, and the sale was made there and then.

C. Q. 4. Did you understand at that time that the patent pertained to show-cases exclusively, or was it intended to cover anything else?

A. I understood that it was intended to cover show-cases exclusively.

Q. 5. Was there nothing said at that time about anything else?

A. No, sir.

Q. 6. Did not the original patent granted to Truby mention metal corners for boxes and the like?

A. I am not positive, but think it did; there was something that I knew nothing about at the time I bought the right.

Q. 7. Did you build the first show-case under that patent right?

A. I don't know; am not positive. M'r Truby may have built one before I did.

Q. 8. Do you know whether or not Truby ever applied the corner-socket or corner-piece to a frame-work of any kind other than a show-case?

A. I don't know.

57 Q. 9. Has John W. Truby ever been in your employ?

A. Never.

Q. 10. Did you ever see a metal socket of any kind applied to the ends of timber for the purpose of holding them together?

A. I don't recollect of ever seeing any.

Q. 11. Have you ever seen an iron shoe or socket similar to the one referred to by M'r Giles?

A. I don't remember of ever seeing any. I may have seen them, but cannot remember.

Q. 12. Is there a larger profit in the manufacture of the metal socket case than in the ordinary style of cases?

A. There is.

Q. 13. How much?

A. About 25 per cent.—one fourth.

Q. 14. What would be the effect on your trade if all the show-case makers of Chicago were to manufacture metal socket cases?

A. Well, I think the effect would be to reduce my sales to a great extent, and deprive me of a great deal of trade and money that I could make if I controlled it—controlled the manufacture of the metal corner case.

Q. 15. Are you of the opinion that a show-case frame joined together by means of a metal socket is stronger and more durable than a frame put together in the usual way?

A. It is stronger put together with the metal corner.

Q. 16. In what respect or for what reason?

A. For the reason that the metal corner would be much stronger than a wood case glued together; it is supported by the metal.

58 Q. 17. In what other respects do you consider the me al corner case as superior to other kinds in common use?

A. Well, I think in its beauty for one thing; and its strength and its much easier to keep clean.

MATTHIAS TERHUNE.

Testimony of George W. Eckerson.

Testimony of George W. Eckerson, taken on the 23d day of October, A. D. 1874, at Chicago, before H. C. Whitney, special examiner.

Question 1. What is your name, age, residence, and occupation?

A. George W. Eckerson; age, 35 years; residence, Chicago, Illinois; and occupation, show-case manufacturer.

Q. 2. Do you know the parties to this suit or either of them; and if you do, how long have you known them, or either of them?

A. I know two of the parties—one of the Phillips and Terhune; have known Terhune about twenty years, and Phillips about one year.

Q. 3. How long have you been engaged in the business of making show-cases?

A. Eleven years.

Q. 4. How long have you been in business for yourself?

A. Between three and four years.

Q. 5. Do you know anything about any understanding between certain show-case manufacturers in Chicago with reference to making what is known as the Terhune patented metallic corner socket show-case; and if you do, state what it is?

59 A. I know of such a combination being formed for the purpose of testing this patent for metallic corner socket show-case. There is Joseph Monk, Jacob D. Vredenburgh, Jacob Riswig, Manqus Anderson, Kendall, and one of the Phillips—Wellington Phillips, of Phillips Bro's—James M. Worthing, and myself, members of this combination.

Q. 6. What was the inducement that caused you and, so far as you know, caused the other members of this combination to enter into this arrangement of which you have spoken?

A. The inducement, so far as this combination was concerned, was, that there was so many of these cases sold for so good a price that if the patent was not good, which we thought it was not, we thought we should have a share in the profits of them; so we concluded to manufacture them in order to test this patent.

Q. 7. What is your opinion with reference to the strength, durability, and superiority generally of the Terhune metallic socket corner show-case compared with other show-cases?

A. Well, so far as the strength goes it is stronger than some and weaker than others, and no more durable than other cases.

Cross-examination by M'r Crane, counsel for defendants:

C. Q. 1. M'r Eckerson, have you, ever since you first knew of this combination to test the validity of Terhune's patent, changed your mind in reference to the validity of the same?

A. I have not.

60 C. Q. 2. Do you believe the patent to be a new and useful improvement in the art of making show-cases?

A. No; I don't believe it to be a new, but it might be useful in some cases; it is new so far as a show case goes, I believe.

C. Q. 3. Have you ever seen a device similar in form and combination to the one now shown you, marked "Exhibit A, Mayhew, H. C. Whitney, notary public," applied to any other purpose than the use of making show-cases?

A. I think I have.

C. Q. 4. For what purpose were they used?

A. For agricultural implements, to attach a handle to the frame-work. I have also seen something similar attached to a tailor's rule.

C. Q. 5. Have you ever seen a metal socket joint attached to the end of two pieces of timber, for the purpose of holding the same together in giving strength to the corner?

A. I can't say that I have seen a socket corner.

C. Q. 6. Have you ever seen pieces of timber that were joined together at the ends by means of a metal corner-piece?

A. I have.

C. Q. 7. Aside from those applied to show-cases?

A. I have.

C. Q. 8. How will the show-case manufactured by complainant compare in strength and durability with the ordinary metal cases in common use?

A. I don't think they will compare favorably at all, either in strength or durability.

61 C. Q. 9. Please to state the reason briefly for such opinion.

A. Well, there is nothing, so far as the strength goes, to hold these socket corner cases together, excepting the three or four small screws, screwed from the metallic socket to the wood inside; for the metal case is soldered firmly at every point.

C. Q. 10. In your judgment, will the ordinary metal case, properly joined together at the corners, withstand a pressure equal to the metal corner case?

A. It will.

C. Q. 11. What, in your judgment, constitutes the value and importance of complainant's patent?

A. Well, it is simply more ornamental.

C. Q. 12. Do you mean by that that cases having the metal corner attached are valuable only as a matter of taste or fancy?

A. I do.

C. Q. 13. Are you acquainted with John W. Truby?

A. I am not.

C. Q. 14. Do you know whether or not the device used by Terhune has ever been applied for any other use than that of a show-case by the the said Truby?

A. I do not.

GEO. W. ECKERSON.

Testimony of J. W. Truby.

Testimony of J. W. Truby, taken on the 28th and 29th days of December, A. D. 1874, at Chicago, before Charles L. Driesslein, United States commissioner for said district.

62 Examined by Mr. Merriam, of the firm of Merriam & Alexander.

Q. 1. What is your name, age, residence, and occupation?

A. My name is J. W. Truby; I am thirty years old; reside at Chicago; occupation, music dealer.

2. Q. Are you a native of this country?

A. No, sir.

3. Q. When did you first come to this country?

A. About '65, in September.

4. Q. Where did you land?

A. In New York.

5. Q. How long did you remain in New York?

A. About a week, and in the State of New York about two years and a half; a little over two years. I was there from September until Christmas—about two years and three weeks in the State.

6. Q. Where did you go from New York State?

A. To Nauvoo, Illinois.

7. Q. How long did you remain in Nauvoo?

A. I was there until about April, '68?

8. Q. Where did you go next?

A. I came back to Chicago.

9. Q. What business did you go in at Chicago?

A. I was working then for Martin, a show-case maker. I worked for some one previous, and went with Martin about the middle of the summer and worked with him until a little before Christmas.

10. Q. Did you ever previously work for Martin?

A. No, sir.

11. Q. How long did you continue to work for Martin?

63 A. Until about four weeks before Christmas, from the time I went to work for him.

12. Q. Did you work for him at any other time?

A. The next year, '69, I was working for him.

13. Q. What time in '69?

A. That I could not tell you; it was in the summ · time, and fall time too. Sometimes after working four or five weeks and work giving out, I would work for some one else then.

14. Q. State whether or not you at any time invented a socket metal corner for show-cases.

A. Yes.

15. Q. State when.

A. That was in '69.

16. Q. State what the invention consisted of, and where you made it.

A. I invented the pattern in Martin's shop, where I worked a little on it. I intended to have it for any corner where a socket would be used, but Coburn could not get me a patent on it, and so we only got it for show cases. That was what I invented it especially for. It's a socket, got three points, and there are three holes in the points, where the mouldings go into the holes and screwed into the holes.

17. Q. State if you made an application for a patent for this invention.

A. Yes, sir; I did.

18. Q. About when did you make the application for the patent?

A. I guess that was in the same year, '69.

19. Q. How soon after the invention was completed did you make an application for a patent?

A. Right away.

64 20. Q. State how you came to make the invention.

A. I thought it was easier to make show-cases in that way, and they would be stronger, and be quicker made, and look better.

21. Q. Did you make a model to send with your application to Washington?

A. Yes, sir.

22. Q. Where did you make it?

A. I made that in the music store on Madison street, near Franklin.

23. Q. Did you ever make any show-cases or a show-case with the application of these metallic socket corners?

A. I made one only. That I made in Martin's shop after the patent

was applied for. That was burned in the big fire; that's the only one I ever made. It was in 130 South Clark street.

24. Q. State whether or not any one assisted you in making the invention.

A. No, sir.

25. Q. State whether or not you ever at any time was in the State of Massachusetts.

A. No, sir; never was there.

26. Q. State whether or not you ever told Martin that you had seen a chair with a metal socket, and got your idea of this invention from such chair.

A. I didn't see a chair at all. Only when I went to Coburn to show him the show-case what I made, I asked him if there was anything like it. After I had a little model made, and he showed me a book, and there was a chair in it. He said that was similar to my pattern.

65 He said that would make no difference, I would get a patent on it anyhow; and Martin misunderstood me, and he said I looked it off from a chair.

27. Q. Did you get the idea of this metal socket corner from a chair or from any other article that you have seen?

A. No, sir; not anything like it. I invented it myself; never saw anything like it either.

28. Q. State whether or not you ever sold or assigned said patent or invention, and, if so, to whom, and when, as near as you can recollect, and whether before or after issue.

A. Yes, sir; I sold it to M'r Terhune, I think, in the year '71—the same year of the fire. About April '71, M'r Terhune paid the last payment on the issue of the patent.

29. Q. Please examine the drawing attached to reissued patent No. 5748, Complainant's Exhibit C, H. C. Whitney, notary public, and state whether it correctly represents the invention which you made.

A. Yes, sir; it is the same thing. Mine was exactly like that. I guess that is the little show-case I made.

30. Q. Please examine the metal socket corners now shown you, Complainant's Exhibit A, H. C. Whitney, notary public, and state whether it is the same in all essential respects as the metallic corners attached to your model sent to Washington with your application for a patent.

A. Yes, sir; it's about the same.

66 No cross-examination.

(Endorsed:) Filed Jan'y 12, 1875. W'm H. Bradley, cl'k.

Complainant's Exhibit C.—H. C. Whitney, notary public.

Reissued letters patent No. 5748.

No. 5748.—Reissue.

The United States of America to all to whom these presents shall come:

Whereas John W. Truby, of Chicago, Illinois, assignor to Matthias Terhune, of same place, said assignee having presented to the Commissioner of Patents a petition praying for the reissue of letters patent for an alleged new and useful improvement in corner sockets for show-cases (for which letters patent were issued to said assignee, dated August 8, 1871, which letters having been surrendered, the same have

been canceled and new letters ordered to issue to him on an amended specification), a description of which invention is contained in the specification of which a copy is hereunto annexed and made a part hereof, and having complied with the various requirements of law in such cases made and provided; and whereas, upon due examination made, the said claimant is adjudged to be justly entitled to a patent under the law:

Now, therefore, these letters patent are to grant unto the said Matthias Terhune, his heirs or assigns, for the term of seventeen
67 years from the eighth day of August, one thousand eight hundred and seventy-one, the exclusive right to make, use, and vend the said invention throughout the United States and the Territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the city of Washington this twenty-seventh day of January, in the year of our Lord one thousand eight hundred and seventy-four and of the Independence of the United States of America the ninety-eighth.

[SEAL.]

C. DELANO,
Secretary of the Interior.

Countersigned.

M. D. LEGGETT,
Commissioner of Patents.

J. W. Truby. Corner sockets for show-cases. No. 5748. Reissued Jan. 27, 1874.

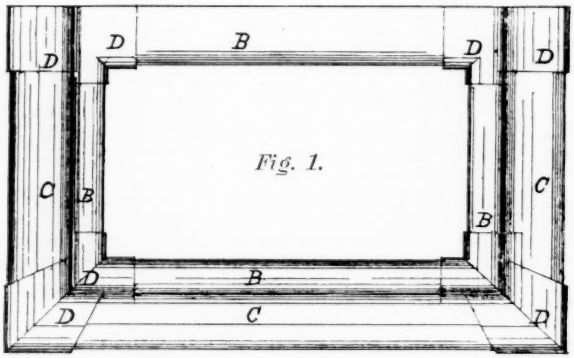

Fig. 1.

68

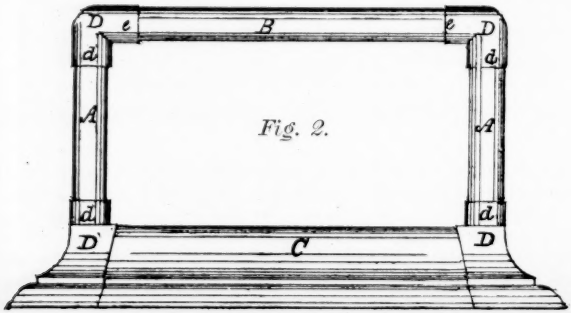

Fig. 2.

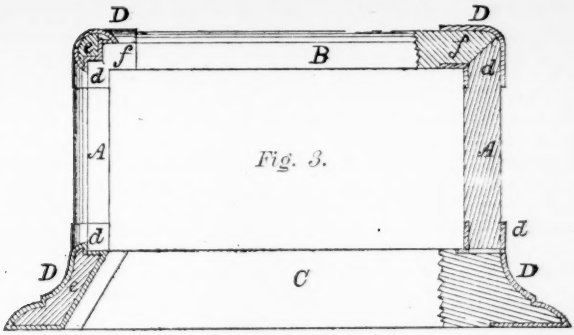

Fig. 3.

Inventor, JOHN W. TRUBY,
By SHERBURNE & CO.,
His Attorneys.

Witnesses:
N. H. SHERBURNE.
JAMES COLEMAN.

United States Patent Office.

John W. Truby, of Chicago, Illinois, assignor to Matthias Terhune, of same place.

Improvement in corner sockets for show-cases.

Specification forming part of letters patent No. 117831, dated August 8, 1871; reissue No. 5748, dated January 27, 1874; application filed December 1, 1873.

To all whom it may concern:

Be it it known that I, John W. Truby, of Chicago, in the county of Cook, and State of Illinois, have invented a new and useful improvement in corner pieces for show-cases; and I do hereby declare the following to be a full, clear, and exact description thereof, which will enable others skilled in the art to which my invention appertains
69 to make and use the same, reference being had to the accompanying drawing forming part of this specification, in which Figure 1 is a general plan or top view of a show-case embodying my said invention; Fig. 2 is a side elevation of the same; and Fig. 3 is a vertical longitudinal section cutting one of the uprights through the center, showing the manner of connecting the ends of the different members of the frame within the corner-pieces.

Similar letters of reference indicate like parts in the several figures of the drawing.

My invention has for its object to provide a means for connecting the ends of the horizontal and vertical members of a show-case frame; and to that end it consists in a metallic corner piece, provided with sockets adapted to receive the ends of the different members, whereby the same are firmly connected at the corners of the case.

In the drawing, A is the vertical members, and B C the horizontal members of the framework; but as the same constitute no part of the

present invention, a description thereof is not necessary to be herein particularly given. D is a corner-piece, which may be made of any suitable metal. These corner-pieces are provided with sockets, *d*, *e*, and *f*, which are so arranged as to receive the ends of the different members A, B, and C of the frame, socket *d* receiving the vertical member, and sockets *e* and *f* receiving the horizontal members. The walls of these sockets are shaped approximating the form of the moulding on the member to be used, and are so arranged as to closely fit the same.

70 The corner-pieces used in connecting the corners of the upper portion or members of the case are made to correspond with the molding used, and are inverted, by which means the upper ends of the vertical members are inserted within socket *d* of the same.

Show-cases have been heretofore manufactured by dovetailing, mortising, or gluing the corners together; but with such connections the corners are more or less liable to break apart, while with my invention this difficulty is entirely overcome, as the corner-pieces hold the corners firmly together, making a more desirable framework.

Having thus described my invention, I claim the metallic corner-piece D, provided with the sockets *d*, *e*, and *f*, adapted to receive the members A, B, and C, of a show-case frame, as specified.

The above specification of my invention signed by me this 29th day of August, 1863.

JOHN W. TRUBY.

Witnesses:
N. H. SHERBURNE.
JAMES COLEMAN.

DEFENDANT'S PROOFS.

Testimony of Wellington Phillips.

Testimony of Wellington Phillips, taken on the 6th day of November, A. D. 1874, at Chicago, before Charles L. Driesslein, United States commissioner.

1. Q. What is your name, residence, and occupation?

A. Wellington Phillips. My occupation is show-case maker. Residence, 53 State street, Chicago. My age is twenty-nine.

71 2. Q. How long have you been engaged in the business of manufacturing and selling show-cases?

A. I have been engaged in manufacturing and selling show-case' eight years.

3. Q. Where have you been so engaged?

A. I have been engaged in Detroit, in Cleveland, in Pittsburgh, and Chicago.

4. Q. Are you familiar with the different styles of show-cases now being manufactured and sold by the different makers in the United States generally?

A. I am.

5. Q. Are you familiar with what is known to the trade as the Terhune patent metallic socket corner show-case?

A. I am familiar with it.

6. Q. Have you ever manufactured a show-case similar to the one made by the complainant in this cause?

A. Yes; I have.

7. Q. State how many of such cases you have manufactured?

A. I have manufactured six.

8. Q. State how many of them you have sold?

A. I have sold four.

9. Q. What, in your judgment, M'r Phillips, constitutes the value and importance of the complainant's patent metallic corner show-case?

A. In the first place, I think the case is not as strong; second place, it takes a man about double as long to put one together, by time kept on cases we have made; and in the third place, they cannot be made as cheap as any other ordinary case. I consider the cases are more
72 expensive to make, and the only thing there is about them is their beauty of the corner.

10. Q. Have you ever, in the course of your experience as a show-case manufacturer and dealer, heard of or seen a show-case that united in its construction a metal corner-piece used for the purpose of joining the mouldings together at the corners?

A. I have seen a case put together with what they call metal joints, which is put on the inside of the moulding, screwed, in order to hold the mouldings together.

11. Q. Does the case you have referred to, in any other particular correspond with the one manufactured by Terhune, the complainant?

A. It has no metal on the outer side, therefore it cannot be seen. It does not add to the beauty of the case at all.

12. Q. You intend by that to state the mouldings are joined together at the ends by means of metal attachments?

A. Yes.

13. Q. Have you ever seen a device similar in form to the metal socket corner used by the complainant applied to any other purpose than in the manufacture of show-cases? If so, state where you have seen such a device, and for what purpose it was used?

(Objected to by counsel for complainant, as being too broad in its enquiry, it being proper only to ask such questions in matters set up in the answer.)

14. Q. Do you consider the metal socket-joint a new and use-
73 ful improvement in the art of making show-cases?

A. I do not.

15. Q. State your reason for such opinion, and whether or not you have ever seen a metal socket joint applied to any other purpose than that of show-cases.

(Counsel for complainant objects to the question for the same reason as stated above.)

A. Well, my reason for thinking that the metal socket is not as useful is, because it takes more time to put them together, and they are no stronger when put together, nor as strong. I have seen machines where there is a metal socket joint used for holding a wooden bar which runs at right angles.

16. Q. How does the metal socket corner case compare in strength and durability with the ordinary metal or metallic case in common use?

A. They are not near as strong. The wood has to be cut away to enter the socket, and leaves it small, which lessens the strength of the mouldings, and it cannot possibly be as strong as where the two mouldings are solidly joined by solder without being cut away.

17. Q. Take the circular marked "Defendant's Exhibit B" and state whether or not you have ever seen a show-case similar to the one illustrated in said circular.

A. I have.

18. Q. State how the corners of such show-case is joined together?

A. The corners are first put together by the means of screws
74 and glue and a piece of metal screwed on from the outside.

Cross-examination by L. L. Coburn, esq.:

None.

Testimony of Joseph Monk.

Testimony of Joseph Monk, taken on the 6th day of November, A. D. 1874, at Chicago, before Charles L. Driesslein, United States commissioner.

19. Q. What is your name, age, residence, and occupation?

A. Joseph Monk; age, twenty-eight; show-case manufacturer; residence, 983 West Washington street.

20. Q. How long have you been engaged in the business of making and selling show-cases?

A. In business as a manufacturer?

21. Q. In the business of making and selling.

A. Since 1867.

22. Q. How many years?

A. Seven.

23. Q. Are you familiar with the patent metallic socket show-case manufactured by Matthias Terhune?

A. I am.

24. Q. Have you ever made a show-case having attached thereto the metal socket corner used by complainant Terhune?

A. Yes.

25. Q. State how many of such cases you have made.

A. I could not give the exact number.

26. Q. Well, approximate it.

A. Ten.

27. Q. State how many of the same have been sold by you.

75 A. Ten; that is about it. It may be one or two less or more. It will be more than that soon.

28. Q. State if you know anything about the formation of the combination of show-case makers organized for the purpose of testing the validity of the complainant's patent.

A. I do.

29. Q. State the particulars briefly.

A. I have forgotten the date, but I know we all met, something over a year ago, and agreed to stand the expenses of a suit, for infringement of the so-called "Terhune's" patent.

30. Q. Go on and state the reason why such combination was formed.

A. The business of manufacturing show-cases is such that not having every style in one wareroom, we would lose trade. Therefore the show-case makers' association formed a combination to test this patent, in order to have this style on hand, to show customers that we could make anything in the line of the manufacture of show-cases.

31. Q. Was there any other reason for forming that combination?

A. No other reason that I know of.

32. Q. Did you believe at that time that the patent owned or claimed to be owned by Matthias Terhune was a valid patent?

A. No.

33. Q. State the reason you have for giving such an opinion?

A. Immediately after the great fire I saw a show-case from Boston

with metal corners, that I should judge were used for ornamenta-
76 tion as well as fastening the corners. The same winter I noticed an advertisement in one of the city papers by William L. Groves, of Philadelphia, advertising the sale of patent rights on show-cases.

34. Q. What kind of show-cases?

A. On writing to him we received an answer with a diagram at the bottom of the letter, of a metallic corner show-case, or rather of the corner with an upright post, the right to use which he offered for sale for twenty-five hundred dollars, claiming a patent on the same.

35. Q. In your judgment, does the metal corner piece used by Groves, of Philadelphia, effect the same result as the metal socket used by complainant, Terhune, in reference to the application of the same to a show-case?

A. As near as I could judge, yes.

36. Q. What, in your judgment, constitutes the value and importance and utility of the complainant's metal socket corner?

A. Ornamental only.

37. Q. How will it compare in strength and durability to the original show-case commonly used or in common use, if the mouldings are properly soldered together at the corners?

A. It does not compare at all.

38. Q. State your reasons for that judgment.

A. A full metal show-case when properly made will last, if not burned up or destroyed, longer than any man present will live. While the metal corner case the plating will wear off, and it has not over one-fiftieth part of the strength that the metal case has at the joints—
77 takes more time to make.

39. Q. State what you know in reference to the cost of manufacturing the metal corner show-case, as compared with the ordinary metallic cases in common use?

A. I have not taken account of the time, but we can make a metal case proper, as it should be made, cheaper than we can make a metal corner case proper, as it should be made.

40. Q. In your experience as a show-case maker, is it a fact that the demand for cases having attached the metallic socket corner is greater than for other styles of show-cases?

A. No.

Cross examination by L. L. Coburn:

41. X Q. Don't you consider, upon reflection, that you have made some extravagant statements in your testimony?

A. No.

42. X Q. Do you actually believe that a metal show-case is fifty ti nes stronger than a metal corner socket case?

A. At the place where the wood enters this piece of metal, yes.

43. X Q. Do you believe that if you should take hold of two pieces of mouldings of the metal show-case, joined together at their ends as they are joined in a metal show-case, and pull on these two pieces in directions to break the corner, that it would take fifty times as much force to pull the pieces apart as it would in the metallic corner socket cases? Would the metallic corner socket case break at the corner, or will
78 the mouldings * * * * * *

A. The mouldings break.

44. Q. The weak part is the wooden mouldings?

A. That is the weak part.

45. X Q. That depends altogether on the size of the wooden mouldings, doesn't it?

A. The base mouldings would not break as easy as the upper mouldings, but the upper mouldings being broken, the case would be as useless as though the base had been broken.

46. X Q. Then the strength depends on the size of the wooden mouldings?

A. Exactly.

47. X Q. Don't you think that the corner socket makes a stronger corner than the other kind?

A. No.

48. X Q. Don't you think it makes a stronger corner than the wooden show-case joined together simply by pins or tenons?

A. You explain, please, to me, what you mean by corner?

49. X Q. I mean right in the corner * * * right in the angle of the corner.

A. It stands to reason that that piece of metal would be stronger than the piece of wood, but if this piece of wood is broken the case would be as useless * * * * this is not a show-case.

50. X Q. Then the metallic corner socket case is stronger right in its corner * * * * at its corners than any other case made, isn't it?

A. No.

51. X Q. What other case is stronger right at the corner—at the angle of the corner?

79 A. At the angle of the corner the regular metal show-case is just as strong as these pieces of metal I hold in my hand (Terhune's), at the corners, and are stronger further from the corner, which these cases are not.

52. X Q. Then the metal corner socket case is as strong, isn't it, right in the corner * * * * in the angle of the corner, as any other case?

A. If I understand you to state it that you consider these corners * * * a metal corner socket case, these are just as strong * * * but these, in my opinion, are not a case.

53. X Q. What are these corners that you hold in your hand?

A. Metal corners.

54. X Q. Whose metal corners?

A. I don't know.

55. X Q. What case?

A. They are corners * * * I didn't know that these were what Terhune claims a patent on.

56. X Q. Then I ask again: The show-cases made with the Terhune socket corners are as strong right at the angle of the corners, are they not, as any other show-case made, that you know of?

A. I don't know what you mean.

57. X Q. I mean right in the metal corner at the angle.

A. The case is as strong. That's what you mean, is it?

58. X Q. The corner is as strong?

A. The corner of the case?

59. X Q. The corner of the case * * * * right in the angle of the corner?

A. Well, I don't know how to answer that question, because I don't recognize these things as show-cases.

80 60. X Q. They form a corner of a show-case, don't they?

A. If you will put the question in a different shape I would answer. * * * * If you ask if the corner attached to show-cases

by Terhune were as strong as other corners, I could answer that question.

61. X Q. Please answer the question.

A. The corners are just as strong. I want it on record whether the question was put to me.

62. X Q. And the corners attached to show-cases, are they not?

A. If you mean are the pieces of metal stronger than a piece of wood, why, yes.

63. X Q. Why, in your opinion, do the people want to buy the Terhune case?

A. Some people want to buy them because the look of them is better than the other kind.

64. X Q. Do you consider that the appearance of a show-case is important to the——

A. Well, with a man that wants to fit up a store very fine, yes, I do.

65. X Q. Do you consider the Terhune show-case the most elegant and beautiful cases made?

A. I think that those made as pretty a case as there is made to-day, because that these corners attached are pretty to look at—ornamental.

67. X Q. Are they not easier kept clean than the metal cases?

A. They are. About that last answer; I don't know that I answered that fully. They are easier kept clean than metal cases. The same as in walnut cases, easier kept clean. These corners here are not easier kept clean than metal cases.

81 68. X Q. Than the walnut corner metal cases, you mean?

A. Yes, or all of the metal cases. Anything that is metal is easier kept clean than anything half metal.

Recalled and direct examination by Mr. Crane, counsel for defendant offered in evidence an all-metal corner marked "Exhibit C."

69. Q. M'r Monk, how are the corners of ordinary metallic show cases joined together * * * * the portion by which metallic corner cases are joined together at the corners * * * * of ordinary metallic cases?

A. This metal like that piece in your hand. The solder is run into it, and with a soldering iron flushed tight as you see.

70. Q. In your judgment is a show case joined together at the corners by that process liable to come apart at the point where the corner is soldered together?

A. Not if it is so properly soldered.

71. Q. Have you ever known in your experience as a show case maker of the ordinary metallic case coming apart at the corners by reason of any imperfection or impurity in soldering?

A. Yes, I have.

72. Q. Frequently or rarely?

A. Rarely.

73. Q. Have you ever seen a show case, M'r Monk, aside from those made by yourself and M'r Terhune, the complainant, joined together at the corners by means of a metallic attachment similar in form to the combination?

A. I have.

74. Q. Where did you see such a show case?

82 A. I have seen a case exactly like this piece * * * put together with a piece of metal exactly like this at M'r Phillips' ware-room.

75. Q. In any other place made by any other manufacturer * * * * in any place aside from there?

A. In Boston I saw a case with a metal corner attached to the piece around the corner.

76. Q. Do you know how that metal piece was applied and fastened to the case? If you do, state.

A. The same as this one, put to the case with screws to the bottom * * * * this metallic corner which I hold.

77. Q. That case in possession of a show-case manufacturer?

A. Named Hughes, in Boston.

78. Q. Was he a show-case maker?

A. Yes, a show-case manufacturer.

79. Q. Did you have any conversation with Hughes at the time in respect to it?

(Objected to, as a conversation with another party is irrelevant.)

80. Q. Have you ever seen a device similar to the socket joint used by complainant in the manufacture of show-cases applied to any other use?

A. Yes.

81. Q. State all you know about that.

A. I have seen sockets used on chisels, agricultural implements, and shoes, as they call them, for beams. I saw one used in the roof of a building where the house now stands. I remarked it when they put it on, and I have seen them use a metal socket on a sand-papering
83 machine, and I have seen them on Pitt's horse-power, and on tailors' rules or squares. You mean a socket that is used for the insertion of wood; is that what you mean?

82. Q. From a joint similar to this?

A. I have seen socket-joint piece on rules, and I see on that steam-heater there an angle.

Recross-examination by M'r Coburn:

83. X Q. Is this model defendant's Exhibit C made as corners of metal show cases are usually made?

A. The base, yes.

84. X Q. If the corners of the upper part are made different, if so, how.

A. In forming this, that piece of wood would have to be removed and that part would have to be soldered fast, part of the wood from the inside of the part would have to be removed and the metal part fitted against the piece, and afterwards soldered. That is the way that joint is formed.

85. X Q. Then how is the top joint formed?

A. The upper end of the upright would have to be similarly gouged out, and fitted against the round moulding of the case at the top, and again soldered.

86. X Q. Then those joints simply have the strength of the solder to hold them; is that all?

A. That is all they have to hold them. That is all that is necessary.

87. X Q. How thick is the metal that is usually used in making a metallic show case?

84 A. Well, if you ask me how thick is the metal we use I can tell you that better. This metal on Exhibit C is "29" old gauge thickness.

88. X Q. What is meant by a gauge?

A. It is a measure for determining the thickness of metals.

89. X Q. Then it means the twenty-ninth thickness of an inch?

A. That is what I don't know. All I know is No. 29. That is just the way it is. I don't know whether it is the sixteenth hundred part of

an inch. I know it ain't half an inch. I don't know if it is the thirty-secondth or sixty-fourth part of an inch. As near as I should judge, that is not more than * * * * It would not take more than fifty thicknesses to make an inch. That is what I think about it.

90. X Q. You mean, then, about the fiftieth part of an inch thick, do you?

A. Yes.

91. X Q. Now, in your opinion would the moulding break quicker at the joints than the solder, providing you could take hold of two pieces of a show case and pull them in a direction to spring the corners apart? (Objected to.)

A. Which way do you mean for me to pull on that to spring it apart. That is a good deal like M'r Terhune's patent on his base. Here it would not be as easily opened as the other. I don't think any man could break them pieces with his arm. The joint would not break, but it would break just where the solder left off.

85 92 X Q. You think, then, do you, that the moulding would break instead of the solder which unites the joints?

A. With that piece, no; with a smaller piece, yes.

93. X Q. Would the moulding break where the wood is in the metal, or where the wood is cut out of the moulding?

A. It would break right where the wood leaves off and the solder begins.

94. X Q. Do you ordinarily fill up the corner of the base-moulding at the corner where it is cut out to get at the corner to solder it?

A. You mean, do we ordinarily cut out—you don't mean out, we fill it.

95. X Q. In Exhibit C you evidently have cut off the ends of the wooden mouldings and set in two pieces to fill up the space after the joint is soldered. * * * Do you ordinarily fill up that piece after the joint is soldered in a show case?

A. We used to when we cut them out; now we don't cut them out any more.

96. X Q. Do you make the moulding shorter?

A. No.

97. X Q. How do you get at the corner to solder it?

A. We take a chisel and cut a little out, and put the solder in each piece when spread out; then fit it, and flush the solder with a hot iron from the outside, where the two are against one another.

98. X Q. What do you use in soldering—what material do you use in soldering the joint?

A. Soft solder.

99. X Q. Anything else?

86 A. I don't know of anything else to solder the joint with.

100. X Q. Don't use any acid?

A. Oh, yes; but that don't solder the joint; that merely causes the solder and metal to have an affinity for each other.

101. X Q. What kind of acid do you usually use?

A. Muriatic.

102. X Q. How long would that solder usually last?

A. Well, I have not lived long enough yet to know, because I have not seen any wear out.

103. X Q. It does not heat the metal?

A. No.

104. X Q. You always get a perfectly soldered joint in making your cases do you?

A. We don't make any more bad joints than you will with Terhune's patent. I have had these corners rejected. Had to throw out—could not accept the job—were not fit for use.

105. X Q. Bad castings, you mean?

A. Bad castings; sometimes we had bad solder.

Testimony of Samuel B. Martin.

Testimony of Samuel B. Martin, taken on the 6th day of November, A. D. 1874, at Chicago, before Charles L. Driesslein, United States commissioner.

106. Q. M'r Martin, what is your name, age, residence, and occupation?

A. Samuel B. Martin; I believe I am about forty-two; occupation, show-case maker, and reside 13 North Green street.

107. Q. How long have you been engaged in the business of making and selling show-cases?

A. Nine years.

108. Q. Where have you been so engaged?

87 A. I was in 240 Lake street, in the city of Chicago; on State street now, 57.

109. Q. Are you acquainted with the complainant, Mathias Terhune, and if so, how long have you been acquainted with him?

A. I have been acquainted with Terhune ten years—over ten years.

110. Q. Are you acquainted with John W. Truby, and if so, how long have you known him?

A. I have known him since 1866 or '67.

111. Q. Where did you first become acquainted with M'r Truby?

A. I hired him to work for me.

112. Q. As a maker of show-cases?

A. Well, yes; he came to work to make show-cases. He was no show-case maker.

113. Q. Do you know anything about the time at which John W. Truby invented, or claimed to have invented, a patent metallic socket-corner in show-cases?

A. '67; I think that is about the time; '67—in the summer of '67.

114. Q. Was he in your employ at that time?

A. Yes; he had been in my employ.

115. Q. Was he at that time?

A. Yes.

116. Q. Was there any conversation had between yourself and M'r Truby in reference to the merits of that invention?

A. All the conversation we had about it was—I was not very busy, and I told him I had no work to keep him to work, and he was making wooden cases, and he thought, he said, he had seen something of

88 a socket for a chair. He would make metal corners, and he would go and make some. Says I, Go at it. He went to work and got the corners up; and him and I made a couple or three cases, and I put the glass in. He told me he had seen these metal corners, and we went to work and made them. Found out they would not sell, and did not take any more. He had seen these metal corners in a chair * * * * in one of these arm-chairs—did not think about trying to get any patent on them. I had just as good a right as he had—more so, because it was as much my idea as it was his. He had seen it in a chair down in Massachusetts, some place. I found out by a party that was in my shop to-day, that

came from Rochester, that there was a man made these show-cases, some seven or eight years ago, down in Massachusetts. Truby had been to work down in Massachusetts, and he had seen the metal corners there.

117. Q. Was there any conversation between you and M'r Truby in reference to applying metal corners to a box?

A. Yes; he thought he could put them on to music-boxes.

118. Q. Do you know whether or not he ever did apply them to music-boxes, or any other instruments?

A. No.

119. Q. How long after this time did he leave your employ?

A. I think he left in the fall.

120. Q. Fall of what?

A. Fall following.

89 121. Q. Do you know what business he is engaged in at present?

A. He is in the music business.

122. Q. Do you know whether or not Truby is a practical show-case maker?

A. No; he is not.

123. Q. Do you know whether or not Truby is a tradesman of any kind; and, if so, what?

A. He is a cabinet-maker by trade.

124. Q. Did Truby state to you in plain language that he had seen a metal corner socket used in a chair?

A. Yes, sir.

125. Q. Did this conversation occur at the time or about the time that you made the first case to which this socket was attached?

A. Yes; I think it was in June or July.

126. Q. Of what year?

A. '67.

127. Q. Do you recollect when you first learned that M'r Terhune, the complainant, claimed a patent for a show-case having metal corner sockets attached?

A. Well, I think, about four years ago.

128. Q. How soon after the time when M'r Truby left your employ did you learn that fact?

A. Well, it was but a few days. * * * * I think it must have been two years after that metal corner was made that he sold the right to Terhune.

129. Q. About two years?

A. About two years.

130. Q. Have you ever made a show-case with the metal socket corner attached?

A. No; I only helped him on it.

90 131. Q. You helped make one while Truby was in your employ?

A. While Truby was working with me.

132. Q. You never made any before or since that time?

A. No; I never made any before or since that time.

133. Q. Are you familiar with the method of applying those metal corner sockets to the frame of the show-case?

A. No; because I never made one.

134. Q. Do you know how they are applied?

A. All is what I have seen. I have never seen one put together, only these two or three we made. Everything was not as nice as that is, because we took and put the brass on, and cleaned them all off, so it

left nothing but brass, but it was just the same as that, but it was not silver-plated. It was a socket, but not silver-plated; just the brass.

135. Q. You could make a case of that kind, could you not?

A. Oh, yes.

136. Q. Well, how will a show-case made of walnut mouldings and joined together at the corners by means of the Terhune socket joint compare in strength and durability to the ordinary metal case in common use?

A. Well, they are not so strong.

137. Q. You may give the reason.

A. Well, the reason is this: There is a very small tenet in there, and all there is to hold that there is that little screw. That is all that holds
that there; of course, when the glass is put into the case it keeps
91 the case from racking, but it is not as strong a case as that metal
joint. You can solder a metal joint together, and the solder will hold it, but that is not as strong in there as a piece of wood fastened together and tenents in, and glue would be stronger than that is (Terhune's corners referred to by witness), because that wood and iron comes together, and if they don't fit tight there is nothing to hold it only that little screw. If that was any substance, that metal with the wood, that they could glue in there it would make it stronger, but there is not, because iron and wood you cannot put anything between that would make it strong, equal to soldering a joint together, because that will hold it. In that little socket corner there is a very small piece of wood, and all that holds them together is the screw.

138. Q. Have you ever seen a device similar to the metal corner socket applied to any other use than that of the frame of a show-case? If you have, state where you saw it, and to what use the same was applied.

A. The only thing that I ever seen it into is where there is knuckles put into steam-pipes, like that—such as that is (referring to steam-heater in the office), and that would be just about the same as this.

139. Q. Did you ever see a metal corner applied to a box as a means of protection, and to give strength to the corner?

A. I have seen them on these dry goods boxes, a piece of brass
screwed on the outside. That is like putting over this a piece of
92 brass, putting a screw on it. That's as near as I have seen it.

140. Q. What, in your judgment, is the value and importance in the metal corner socket joint as applied to a show-case . . . What gives it value?

A. This, because a man might ask more for it, and the man is foolish to give him more for it.

141. Q. What, in your judgment, constitutes the utility and importance of that patent?

A. Why, it is only them metal corners, where they are polished so nice . . . . come in contact with the walnut case, makes it look nice.

142. Q. You say they are something new; do you mean by that they are rare as applied to a show-case?

A. Yes; applied to show-cases for the last four years. This silvered makes them look a little better to the walnut.

143. Q. Is it your judgment a metal corner makes only a more ornamental show-case?

A. That is all. It ain't a strong case.

144. Q. Should you conclude from your experience as a show-case maker that taking into consideration the cost of making that case, the

profits would be greater than those arising from the sale of other cases of a different design and style?

A. That is a question I cannot answer very well. There is this about that: No person else makes that kind but Terhune, and if he has a mind to ask eight or nine dollars a foot for them, and other parties make metal cases and only ask five to six dollars a foot for them, he has that much more profit than what we do.

93 145. Q. Have you ever received any orders from your customers for metal socket cases?

A. No, sir.

146. Q. What is your opinion in respect to the validity of M'r Terhune's patent?

A. Well, what way do you mean?

147. Q. Well, whether it is new and useful, and of value?

A. Well, I view, of course, that it is of value to him.

148. Q. Do you believe from your experience and conversation you had with Truby, and the construction of the device itself, that the patent is valid?

A. I don't understand.

149. Q. Or that it is of any use aside from ornamentation?

A. Of course it's a show-case. Of course it shows goods as well as any other show-case you are a mind to make. If there is glass on each side and glass on top, it will show goods so well as this (referring to exhibit C.)

150. Q. Is it easier to keep Terhune's case clean than the ordinary metal case?

A. Yes, it is easy; because the flies won't only light on this. They will light on the metal corners. In the metal corners you have to, in the black walnut you have not.

Cross-examination by M'r Coburn:

None.

Testimony of J. D. Kendall.

Testimony of J. D. Kendall, taken on the 6th day of November, A. D. 1874, at Chicago, before Charles L. Driesslein, United States commissioner.

151. Q. What is your name, age, residence, and occupation?

94 A. J. D. Kendall; age, thirty-four; 180 Sedgwick street; show-case manufacturer.

152. Q. Sedgwick street, Chicago?

A. Yes.

153. Q. How long have you been engaged in the business of making and selling show-cases, M'r Kendall?

A. About two years and three months.

154. Q. Do you know the complainant in this suit, Matthias Terhune?

A. Personally, I do not. I have seen him, that is all.

155. Q. Are you familiar with a certain style of show-case called the Terhune patent metal corner socket case?

A. I am; so much as I have repaired them.

156. Q. You are familiar with the method by which the metal corner sockets are attached to the case?

A. I am.

157. Q. How, in your judgment, would a case manufactured by M'r

Terhune compare in strength and durability with the ordinary metallic case?

A. Well, I should not think they were half as strong—half as durable to stand racking. I have offered to-day a metal corner even swop for a metal. Pardy told me they were a nuisance. He had one he had used some time.

158. Q. You say you have repaired metal cases?

A. Yes, sir.

159. Q. What part of the case, M'r Kendall?

A. That is, in setting the glass . . . . setting them up.

95 160. Q. In this you repaired the glass was merely broken?

A. That is all.

161. Q. What, in your judgment, constitutes the value and usefulness of a show-case having attached the metal corner socket-joints?

A. Looks, I should think, would be all—appearance.

162. Q. You mean to say by that, do you, it makes a more ornamental show-case?

A. Than plain wood. I take it from what customers have said about it. It would look better than a plain walnut . . . ornamental.

163. Q. Have you ever received any orders from your customers for—

A. Never have.

164. Q. Do you manufacture the other styles of show-case?

A. We do,

165. Q. Constantly?

A. From the start, with the exception of them; and should manufacture them if we got an order for it—could not do it. Parties take the metal in preference.

Cross-examination by M'r Coburn:

None.

Affidavit of Thomas M. Howe.

In the circuit court of the United States for the northern district of Illinois. In chancery.

MATTHIAS TERHUNE }
vs.
JOHN PHILLIPS ET AL. }

96 STATE OF ILLINOIS,
Cook County, ss:

Thomas M. Howe, being first duly sworn, on oath says that he is 27 years of age and a mechanic by occupation. That he resides in the city of Chicago, in said northern district of Illinois. That he is now in the employ of Crane Brothers' iron-manufacturing company, which does a general manufacturing business in said city of Chicago, such manufactory being situate at No. 10 North Jefferson street, in said city of Chicago. That he is familiar with what is known to the trade as an "iron tee joint," and iron coupling, and knows the uses thereof; that the same is applied to the ends of wrought-iron, gas, or water pipes, and is used for the purpose of forming a joint or connection and for connecting the ends of such pipes together; that the same is used for a variety of purposes in the iron trade, as for connecting the bars or iron rods forming a guard or protection around open cellar ways and for connecting the mounting of the counters for banks and other places of business. That

the purpose for which said tee-joint and iron coupling are specially used is for connecting the ends of pipes running at different angles, and to make a proper joint at the corners.

This affiant further says that the said Crane Brothers' Manufacturing Company are constantly manufacturing and selling the said tee-joint and iron coupling in the usual course of their business, and have so
97 manufactured and sold said tee-joint and iron coupling for upwards of ten years last past.

THOMAS M. HOWE.

Subscribed and sworn to before me this 25th day of January, A. D. 1875.

[SEAL.] ROBERT L. TATHAM,
Notary Public.

Letters patent No. 117831.

The U. S. Patent Office to all persons to whom these presents shall come, greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted Matthias Terhune, dated August 8th, 1871, No. 117831, for "imp't in corner sockets for show cases, boxes, &c."

In testimony whereof I, M. D. Leggett, Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this first day of April, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-eighth.

[SEAL.] M. D. LEGGETT,
Commissioner.

No. 117831.

The United States of America to all to whom these presents shall come:

98 Whereas John W. Truby, of Chicago, Illinois, has presented to the Commissioner of Patents a petition praying for the grant of letters patent for an alleged new and useful improvement in corner sockets for show cases, boxes, &c. (he having assigned his right, title, and interest in said improvement to Matthias Terhune of same place), a description of which invention is contained in the specification of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided; and whereas upon due examination made the said claimant is adjudged to be justly entitled to a patent under the laws:

Now, therefore, these letters patent are to grant unto the said Matthias Terhune, his heirs or assigns, for the term of seventeen years from the eighth day of August, one thousand eight hundred and seventy-one, the exclusive right to make, use, and vend the said invention throughout the United States and the Territories thereof.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the city of Washington, this eighth day of August, in the year of our Lord one thousand eight hundred and

seventy-one, and of the Independence of the United States of America the ninety-sixth.

[SEAL.]

B. R. COWEN,
Acting Secretary of the Interior.

99 Countersigned:

M. D. LEGGETT,
Commissioner of Patents.

John W. Truby. Improved corner socket for show cases and frames. 117831. Patented Aug. 8, 1871.

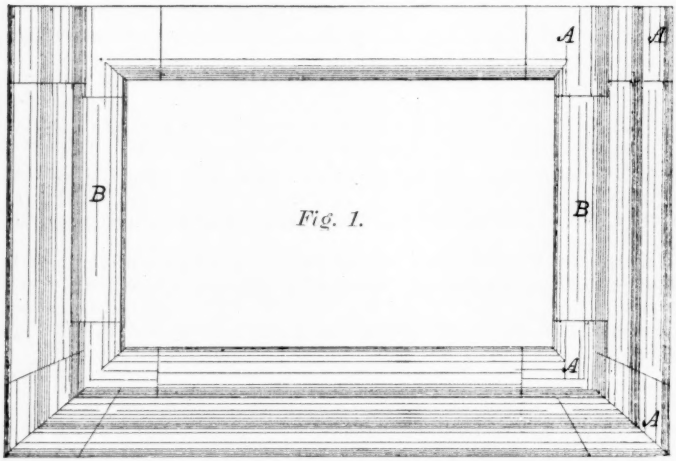

Fig. 1.

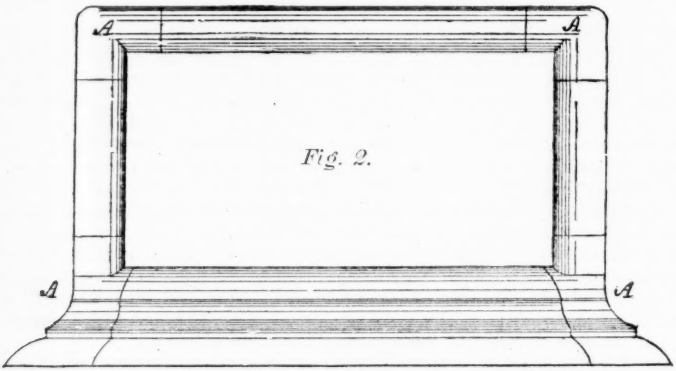

Fig. 2.

100

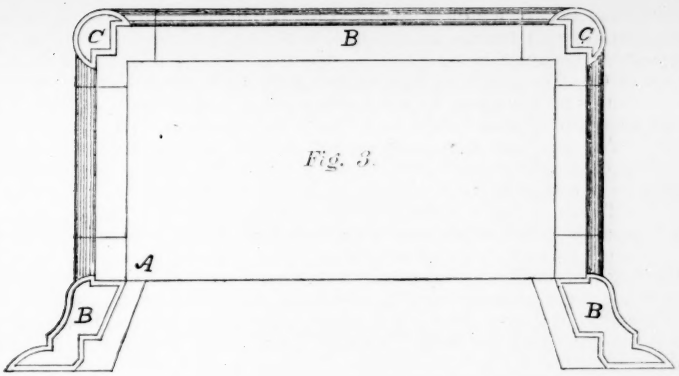

Fig. 3.

Inventor, JOHN W. TRUBY.

Witnesses:
LEWIS S. COBURN.
E. L. COBURN.

117831.

United States Patent Office.

John W. Truby, of Chicago, Illinois, assignor to Matthias Terhune of same place.

Improvement in corner sockets for show cases, boxes, &c.

Specification forming part of letters patent No. 117831, dated August 8, 1871.

To all whom it may concern:

Be it known that I, John W. Truby, of Chicago, in the county of Cook and State of Illinois, have invented a new and useful improved corner socket for show cases, boxes, and frames of all kinds, and I do hereby declare the following to be a full, clear, and exact description of the same, reference being had to the accompanying drawing and to the letters and figures marked thereon, which form a part of this specification and in which—

101 Figure 1 represents a top view of a show-case with my corner-sockets applied, Fig. 2 a side elevation of the same, and Fig. 3 a side elevation of one side of a show-case, showing the corner-sockets thereon.

Show-cases and frames manufactured in the ordinary manner, by dovetailing, mortising, or glueing the corners together, are very liable to break apart, and furthermore, one of the main items in manufacturing show-cases and frames is the labor in putting the pieces together at the corners.

To overcome these objections I make metallic corner-pieces or sockets, A. The different pieces of the frame of the show-cases may be made of any desired shape, as in the annexed drawing. The base pieces are not of the same shape as the uprights and the top pieces, and that part of the

lower corner socket which is intended for the lower molding of the show-cases is made of the same shape as the molding, as shown at B; also, the shape of the socket that receives the upper molding B of the show-case is shown at C. These corner-sockets are cast with projections to receive the moldings of the frame or show-cases, each projection being adapted to the shape of the molding it is desired to use for that part of the frame. The molding may then be got out in long strips and simply sawed to desirable lengths and the ends put in the corner-sockets when the frame is completed.

These sockets make a nicely finished corner that will always
102 remain substantial and firm, and the frame cannot give in its joints so as to sag out of shape.

Having thus fully explained the nature and construction of my invention, what I claim, and desire to secure by letters patent, is—

The corner sockets A for show-cases, boxes, and frames, having cavities C molded to fit the molding which connects said sockets, as shown and described.

JOHN W. TRUBY.

Witnesses:
LEWIS L. COBURN.
J. L. COBURN.

And afterwards, to wit, on the 24th day of February, A. D. 1875, said complainants by their solicitors filed in said clerk's office their bond in appeal in said entitled cause, which said bond is in the words and figures following, to wit:

Appeal bond.

Know all men by these presents that we, Matthias Terhune and James B. Story, are held and firmly bound unto John Phillips and Wellington Phillips in the full and just sum of five hundred dollars, to be paid to the said John Phillips and Wellington Phillips, their certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents, sealed with our seals and dated this 15th day of February, A. D. 1875.

103 Whereas lately, at a term of the United States circuit court for the northern district of Illinois, in the seventh judicial circuit, in a cause depending in said court between Matthias Terhune, complainant, and John Phillips and Wellington Phillips, defendants, heard and determined on the 25th day of January, A. D. 1875, a decree was rendered against said complainant, Matthias Terhune, dismissing his bill of complaint against the said defendants, and that the said defendants have and recover their costs in said cause, from which said finding and decree of the said United States circuit court for the northern district of Illinois the said Matthias Terhune has prayed for and obtained an appeal to the Supreme Court of the United States to be holden at Washington the second Monday in October next:

Now, the condition of the above obligation is such that if the said Matthias Terhune shall prosecute said appeal to effect, and answer all damages and costs if he fail to make said appeal good and to secure

a reversal or modification of said finding and decree, then the above obligation to be void, otherwise in full force and effect.

MATTHIAS TERHUNE. [SEAL.]
JAMES B. STOREY. [SEAL.]

Signed, sealed, and delivered in the presence of—

J. W. MERRIAM.

Approved.

H. W. BLODGETT,
Judge.

(Endorsed:) Filed Feb'y 24, 1875. W'm H. Bradley, clerk.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

To John Phillips and Wellington Phillips:

You are hereby cited to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October, A. D. 1875, pursuant to an appeal prayed in a certain cause wherein Mathias Terhune was the complainant and you are the defendants, to show cause, if any there be, why the decree should not be reversed and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Henry W. Blodgett, the 30th day of January, A. D. 1875.

H. W. BLODGETT, *Judge.*

The above-named defendants hereby admit service of the above citation.

CRANE & TATHAM,
Solicitors for Def'ts.

Oct. 12, 1875, Chicago, Illinois.

(Indorsed:) Terhune v. Phillips et al. Citation.

104 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said district, do hereby certify the above and foregoing to be a true correct, and complete transcript of the record of all the proceedings had in said court in said entitled cause, wherein said Matthias Terhune is complainant and John Phillips and Wellington Phillips are defendants, as the same appears of record remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court at my office in Chicago, in said district, this 12 day of October, 1875.

[SEAL.] W. H. BRADLEY, *Clk.*

(Indorsement on cover:) No. 106. Matthias Terhune, appellant, vs. John Phillips and Wellington Phillips. N. Illinois C. C. U. S. Filed 7th April, 1876.

REC. 106—4

United States Supreme Court

October Term, A. D. 1878.

MATTHIAS TERHUNE. *Appellant.* vs. *JOHN PHILLIPS, et al.* *Appellees.*	Appeal from the U. S. Circuit Court for the Northern District of Ill.

BRIEF AND ARGUMENT FOR APPELLANT.

L. L. COBURN, Solicitor, J. W. MERRIAM, of Counsel.

CHICAGO.
W. R. Alexander, Printer, 157 Washington St.

1878.

United States Supreme Court

October Term, A. D. 1878.

MATTHIAS TERHUNE, *Appellant.* vs. *JOHN PHILLIPS, et al.* *Appellees.*	Appeal from the U. S. Circuit Court for the Northern District of Ill.

BRIEF AND ARGUMENT FOR APPELLANT.

I.

The depositions, admitted by the court on behalf of the defendants, and constituting a part of the record, contain no reference to any subject matter set up in the answer, and are made by witnesses, whose names are not in any way alluded to in the answer of the defendants

It was therefore error to admit them to be considered upon the questions of novelty, or the validity of the patent.

Patent Law of 1870, Sec, 61.

U. S. Rev. Statutes, Sec. 4920.

Teese v. *Huntingdon*, 23 Howard, 10.

Blanchard v. *Putnam*, 8 Wall. 420.

R. R. Co. v. *Dubois*, 12 Wall. 47.

Agawam Co. v. *Jordan*, 7 Wall. 596.

II.

The *ex parte* affidavit, filed by the defendants on the day of the hearing was not competent testimony or properly admitted as evidence, to be considered on the question of the novelty of the invention, or the validity of the patent.

U. S. Rev. Statutes, Sec. 862.

Supreme Court Rules, Rule 67.

Layton v. *Cooper*, 2 N. Y. L. 61.

Richardson v. *Golden*, 3 Wash. 109.

Also cases cited above.

III.

There being no evidence properly taken and submitted in the case, touching the questions of novelty and validity of the patent, it was error for the court, in view of the fact that the defendants in their answer, admitted that they had "manufactured and sold a limited number of show cases to which were attached the said patented improvement and invention," to find "the equities with the defendants and dismiss the bill of complaint."

Or, in other words, there being no competent evidence introduced by the defendants, and they having admitted the infringement of the complainants Letters Patent in their answer,

the complainants' patent stood unattacked, and remained *prima facie* good and valid.

Blanchard v. *Putnam*, 8 Wall. 420

Cahoon v. *Ring*, 1 Fish. 397.

Smith v. *Woodruff*, 6 Fish. 476.

Pitts v. *Edwards*, 2 Fish. 54.

IV.

Even if all of the testimony taken by the defendants should be held to be properly admitted and considered, it is not sufficient to warrant the court in its finding.

Judge Sprague in *Emmes* v. *Cook*, 2 Fish. 147, gives this rule, for determining whether one device is similar to another; he says, "We must ascertain whether it embraces both its elements, viz: the devices and the mode of applying them." Test this question of anticipation by that rule, and what results? The devices are entirely dissimilar. There are but two points in common: both are made of metal and both have three sockets.

Here all similarity ends. The shape of the tie-joint in no way suggests the shape of the ornamental corners, Exhibit D, it being a single article of uniform shape, while the corners, Exhibit D, represent eight separate pieces of metal, some of them of irregular shape and differing widely from the others. The tie-joint is designed and used for connecting metal pipes together, so as to make a tight joint to enabled gas, steam, heated air, or water, to be passed continuously through them—and incidentally for connecting round metal bars or rods used for the protection of open cellar ways, and in bank railings. The metal corners are

designed and used simply as corners of a show case, in combination with the wooden members of the frame, and not adapted or applied to any other known use. The tie-joint is used to connect regularly shaped metal to metal, and fasten it by means of a screw-thread cut on the inside of the socket, and outside of the metal to be joined to it. The metal corners are used to connect metal to wood —the wood being different and irregularly shaped mouldings; the sockets in the corners made to correspond thereto; and the mouldings being fastened in the sockets, by means of a screw passed through the metal into the wood. (Rec. p. 16.) The shape of the tie-joint is uniform and it can be interchangeably used at any corner when a connection is desired, while each of the eight separate pieces of which the corners are composed is designed for its particular corner, and can be used nowhere else; and is provided with means for inserting the glass in the frame, which would be impossible, as would also the insertion of the show-case members, in any such contrivance as the tie-joint.

How much short of demented would any patent lawyer be held to be, who should bring a suit upon this patent, to enjoin the use of the tie joint, if it was admittedly first made subsequent to the granting of the patent?

In order to constitute one device an anticipation of another, it must have been capable of the use to which it is put in the patent, and be of such a character that a mechanic of competent skill would be able in the then state of the art, to construct the identical thing, it is claimed to have anticipated from a mere inspection and examination of the prior device.

Pitts v. *Wemple* 2 Fish. 15.

Apply that rule to this case—observe the state of the art as described in the specifications—place the tie-joint in the hand of a competent mechanic, and tell him to fasten show case corners with it to make a frame, and how would he succeed? He would see, to begin with, that the members of the frame would not fit his device, that he had no way of fastening them in, that he could not insert the glass in any frame he could make, to be fastened with this device; in short, that there was not one feature of this tie-joint adapted to his purpose, or even suggestive of the manner of accomplishing that purpose.

If it be held that the tie-joint bears a degree of similarity to the inverted corner piece D, used in connecting the upper corners of a show case, which we deny, that does not invalidate the patent; the claim in this patent is for "*The metallic corner piece D*; provided with the sockets d. e. and f. *adapt-to receive the members, A., B. and C. of a show case frame*, as specified." It is not for the sockets in a metal corner, but is for the corner provided with the sockets, adapted to the purpose for which it is designed. If the similarity of some part of a device embraced in an invention, with some article in common use, invalidated the patent, there would be an end of all patents.

Waterbury Brass Co. v. *Miller*, 5 Fish. 48-62.

Crane v. *Price*, Webster's P. C. 409.

Geiger v. *Cook*, 3 W. & S. (Pa.) 266.

Bray v. *Hartshorn*, 1 Clif. 538-541.

The sockets d. e. and f. are not the subject of the patent, but only an element of it as claimed. The inventor had a right to borrow the idea of any or every different part of his

invention, provided the device as a whole is new.

Many v. *Sizer*, 1 Fish. 17.

Carr v. *Price*, 1 Fish. 198.

Latta v. *Shawk*, 1 Fish. 465.

We do not admit that the inventor in this case did borrow his ideas from any source. He swears that he did not. (Rec. p. 29.) But if he had borrowed them all, and put them together in such a way as to produce a new and useful article, as is admittedly the result in this case, such borrowing would not have detracted from the merits of the invention nor affected its legal *status*.

Respectfully Submitted,

L. L. COBURN,

Solicitor.

J. W. MERRIAM, *of Counsel.*